(16,386.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 236.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE DETROIT RAILWAY AND THE CITY OF DETROIT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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1 *Bill of Complaint.*

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

Your orator, The Detroit Citizens' Street Railway Company, files this bill of complaint against The City of Detroit and The Detroit Railway, as defendants herein, and humbly complaining your orator shows:

1. The Detroit city railway was organized as a corporation on the 9th day of May, 1863, for thirty years, under an act entitled "An act to provide for the construction of train railways," approved February 13, 1855, and which act as amended is chapter 94 of Howell's Annotated Statutes.

Said corporation was organized for the purpose of accepting, and immediately after its organization it did accept, an ordinance of the common council of the city of Detroit, approved November 24, 1862, as amended by an ordinance approved December 27, 1862, and by an ordinance approved January 12, 1863. Said ordinance, as so amended and accepted, together with the supplementary and amendatory ordinances subsequently passed by the common council and accepted by the company, constitute chapter 109 of the Revised Ordinances of the City of Detroit of 1890, as published by said city of Detroit, and a copy of said chapter is made a part of this bill and is hereto annexed as Exhibit "A."

The said corporation, under and by virtue of said ordinances, constructed and operated street railways upon the streets specifically named in said ordinances, and remained in the possession and conduct and operation of the same until the 1st day of December, 1890, when it sold and conveyed all its street railway lines and all its property to the Detroit Street Railway Company, and on the

2 16th day of September, 1891, said last-named company sold and conveyed all of the street railway lines and all of the property it had so acquired, together with such other property as it had acquired, to your orator, The Detroit Citizens' Street Railway Company.

2. The Detroit Citizens' Street Railway Company is a corporation organized August 24, 1891, for thirty years, under and by virtue of the act entitled "An act to provide for the formation of street railway companies," approved March 5, 1867, and which act as amended is chapter 95 of Howell's Annotated Statutes. On the 1st day of October, 1891, it came into full possession and control as the purchaser thereof, of all the street railway lines and all the property previously owned by the Detroit city railway and by the Detroit Street Railway Company, and from thence hitherto it has operated and still continues to operate all of said street railway lines, and it and its predecessors in the title have always faithfully fulfilled and performed all the terms and conditions imposed upon and accepted by the said Detroit city railway by the ordinance of November 24,

1862, and the ordinances amendatory thereof and supplementary thereto aforesaid.

3. Section 2 of the ordinance of November 24, 1862, which is still in full force and effect as a part of the contract between the parties, is as follows:

"SEC. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson avenue, through Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street to the western limits of the city; and through such other streets and avenues in said city
3 as may, from time to time, be fixed and determined by vote of the common council of the said city of Detroit, and assented to, in writing, by said corporation organized as provided in section first of this ordinance: And provided, the corporation does not assent, in writing, within thirty days after the passage of said resolution of the council, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense: Provided, always, That the railways on Grand River street, Gratiot street, and Michigan avenue, shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue: Provided, always, that said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863.)"

4. The provisions of said section two were agreed upon for the mutual benefit and protection of both of the parties to the contract, and they were rendered especially desirable, expedient and necessary because of the peculiar character of the plan of the city of Detroit, and the location of the central business portion of the city.

The city of Detroit was destroyed by fire in 1805, and under an act of Congress the governor and judges of the Territory of Michigan adopted a plan for the city, since known as the governor and judges' plan. It was reported to Congress, and will be found in American State Papers, Public lands, vol. 5, pp. 493–497.

The two principal streets in the city of Detroit are Jeffer-
4 son avenue and Woodward avenue. Jefferson avenue runs nearly parallel with the Detroit river, on a course of north 60 degrees east. Woodward avenue starts at the ferry landing on the Detroit river, and, running on a course north 30 degrees west, crosses Jefferson avenue at right angles, and three blocks north of Jefferson avenue it runs through a public square known as the Campus Martius, and four blocks still further north it runs through

another public square known as the Grand Circus, and from thence on nearly the same course into the country.

The next three leading streets are Michigan, Grand River and Gratiot avenues, running diagonally into the city on the following courses respectively: Michigan avenue, due east and west; Grand River avenue, north 61 degrees west; and Gratiot avenue, north 30 degrees east, so that all of the principal thoroughfares of the city converge at or near the Campus Martius.

Michigan, Grand River and Gratiot avenues are long, retail streets, but the leading retail street is that part of Woodward avenue lying on each side of the Campus Martius, and extending from Jefferson avenue to the Grand Circus.

The city hall is on the Campus Martius, and the leading hotels of the city are there or in that vicinity.

The result of all this is, that the business, and the street-railway traffic and all other traffic in the streets of Detroit *is* drawn towards the Campus Martius as a common center, and from which the main lines of street traffic necessarily radiate.

Under these facts the provisions of said section 2 were especially advantageous to the public, as it would necessarily result therefrom that the grantee company and its successors, in protecting their own interests, would be led to perfect one general street railway system for the whole city. As a matter of fact, your orator now owns and controls, with one exception, all the street railway lines in the city, the one exception being that of the cross-town line running on Fort street west and Champlain street, and owned and operated by the Fort Wayne & Belle Isle Railway Company.

A map showing the plan of the city of Detroit, and the present street railway lines in the city, is hereto annexed and made a part of this bill as Exhibit "B."

5. On the 15th day of March, 1892, the city of Detroit filed a bill in the circuit court for the county of Wayne, in chancery, against the Detroit Citizens' Street Railway Company, the Detroit City railway, the Washington Trust Company of the City of New York, and Sidney D. Miller and William K. Muir, trustees, the sole object and purpose of which bill was to obtain a judicial and authoritative determination of the question whether the ordinance of November 14, 1879, extending the grant of consent to the Detroit city railway for thirty years from that date was valid; that process for the appearance of the defendants in said bill was duly issued and served, and the court obtained jurisdiction of the subject-matter and the parties; that upon an application and proceedings instituted by the said Washington Trust Company, as a citizen of the State of New York, said cause was, under the Constitution and laws of the United States, removed to the circuit court of the United States for the sixth circuit and eastern district of Michigan; in equity, and said cause was in that court prosecuted by the city of Detroit to a final decree; that upon the 30th day of November, 1894, in pursuance of the decree and mandate of the United States circuit court of appeals for the sixth circuit, a final decree was duly granted and entered in

said cause in the circuit court of the United States for the sixth circuit and eastern district of Michigan, wherein and whereby
6 it was finally and conclusively adjudged and determined, as between the city of Detroit and your orator and the other parties, that said ordinance of November 14, 1879, was and is legal and binding, and in and by which decree the city of Detroit was enjoined and restrained from interfering with your orator in the enjoyment of the rights and privileges conferred upon the Detroit city railway by the ordinances of November 24. 1862, and November 14, 1879, and the other ordinances amendatory thereof and supplementary thereto aforesaid, until the 14th day of November, 1909; and the right of your orator to such enjoyment has in and by virtue of the litigation and decree aforesaid, been fully and finally adjudicated and settled.

6. At the time the ordinance of November 24, 1862, was passed and accepted, the population of the city of Detroit was only about 50,000 people, and there were no street railways in the city. The provisions of said section 2 were inserted in the ordinance for the purpose of inducing the promoters and stockholders of the Detroit city railway to invest sufficient capital to establish a street railway system in the city of Detroit; that in pursuance of said section two, and in reliance thereon, the Detroit city railway built and constructed a large number of street railways in streets fixed and determined by subsequent votes of the common council both before and after the ordinance of November 14, 1879; that many of the extensions of old routes and the building of new routes were accepted by the company and constructed and operated long before they would pay even operating expenses, in reliance upon the provisions of said section two, and for the purpose of enabling the company to realize the benefits and profits that would accrue to it during the latter years of the grants so made, and the city of Detroit and the people of said city have had and enjoyed all the benefits and
7 advantages that have accrued to it and them during the first years of said grants, and it would be unjust and inequitable to now permit the city of Detroit to reject or repudiate the contract so entered into by it, or any part thereof.

7. On the 20th day of November, 1894, Albert Pack, Greene Pack and Henry A. Everett presented to the common council of the city of Detroit a petition alleging that they desired to construct and operate street railways on certain streets, alleys and public places in the city of Detroit, a copy of which petition is hereto attached and made a part of this bill of complaint as Exhibit "C."

In pursuance of said petition an ordinance has been passed by the common council of said city and approved by the mayor, granting to said petitioners, when they and their associates should be incorporated as a street railway company, the right to construct, maintain and operate street railways upon portions of certain streets, avenues and public places in said city upon which your orator is now maintaining and operating street railways, and also the right to construct, maintain and operate on certain other streets, alleys and public places in the city of Detroit, and without giving to your

orator the first right to construct the same as provided by said section two.

A copy of said ordinance as approved by the mayor on the 4th day of December, 1894, is hereto attached and made a part of this bill of complaint as Exhibit "D."

8. At a meeting of the common council held on the 27th day of November, 1894, at which meeting the common council were about to act on the ordinance—Exhibit "D"—your orator in view thereof, caused to be presented to the said common council a protest against the passage of the same and the impairing of the contract rights of your orator in the premises, which protest is as follows:

8 "To the honorable, the common council of the city of Detroit:

The undersigned, the Detroit Citizens' Street Railway Company, respectfully calls the attention of your honorable body to section two of an ordinance approved November 24th, 1862, and being chapter 109 of the Revised Ordinances of the City of Detroit of the year 1890, which, among other things, provides as follows:

"SEC. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson avenue at its intersection with Woodbridge street to Third street; up Third street to Fort street, and through Fort street to the western limits of the city; and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the common council of said city of Detroit, and assented to, in writing, by said corporation as provided in section one of this ordinance; and provided the corporation does not assent, in writing, within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track already laid at their own cost and expense."

And also section 5 of an ordinance approved November 14th, 1879, to be found on page 279 of the Revised Ordinances of the City of Detroit for the year 1890, which, among other things, contains the following:

"SEC. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordi-
9 nance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from this date."

This company insists that under the provisions of those two sections it has the contract right with the city of Detroit to be given the first option of building any new and additional street railway lines or routes fixed by your honorable body, with the right to accept the same within thirty days after they have been designated, and this company respectfully states that it stands ready and wil-

ling to construct all reasonable and necessary routes which may be designated by your honorable body under the provisions above referred to.

This company, therefore, respectfully but earnestly protests against the adoption of any resolution or ordinance or the taking of any action by your honorable body, granting to any other persons or corporation, the right to construct street railway lines or routes on any of the streets of this city without first giving this company an opportunity to construct the same according to the provisions above referred to.

This company also protests under like authority against the granting to any other person or corporation, the right to lay tracks and operate street cars on any of the streets, avenues or public places, or on any portion thereof, on which the undersigned now owns and operates street railway lines, as being in violation of the contract existing between the city and this company, under which it is given the exclusive right to construct and operate street railways on the streets now occupied by it, and also as being in violation of the terms of section 3527 of Howell's Annotated Statutes, being section 34 of chapter 94 of Howell's Annotated Statutes, under which the grant and contract existing between this company and the city was made.

This company owns all the rights granted by the ordinance of November 24th, 1862, and November 14, 1879, as the successor and assignee of the grantees and corporations named in said ordinance.

Respectfully submitted.

DETROIT CITIZENS' STREET RAILWAY COMPANY,

[SEAL.] By JAS. M. EDWARDS, *President.*

Attest: J. R. STIRLING, *Secretary.*

Detroit, November 27th, 1894."

9. Your orator caused a notice to be duly served on said Albert Pack, Greene Pack and Henry A. Everett on the 1st day of December, 1894, of which the following is a copy:

"To Albert Pack, Greene Pack and H. A. Everett and their associates and the Detroit railway:

You are hereby notified that the undersigned, the Detroit Citizens' Street Railway Company, holds and claims that the ordinance passed by the common council of the city of Detroit at its meeting held Wednesday, the twenty-eighth day of November last, is void and in contravention of its rights in the streets to construct, maintain and operate street railways in the streets of Detroit under the terms of chapter 109 of the Revised Ordinances of the city of Detroit for the year 1890, and especially the rights granted by section two of said chapter, to be found on page 267 of said Revised Ordinances as extended by section 5 of an ordinance of the common council of the city of Detroit, approved November 14th, 1879, being a portion of

said chapter 109, and to be found on pages 279, 280 and
11 281 of the volume of Revised Ordinances above referred to.

You are further notified that this company will insist on its rights under the said grants of which it is the assignee.

Yours respectfully,

DETROIT CITIZENS' STREET RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*

Detroit, December 1, 1894."

10. On the 4th day of December, 1894, your orator notified the mayor and common council of the city of Detroit as follows:

"To the honorable the mayor and common council of the city of Detroit:

You are hereby respectfully notified that the undersigned has become the assignee of the railroads and property heretofore controlled by the Detroit city railway, under and in accordance with the terms of an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit,' approved November 24, 1862, and of all rights, privileges and franchises supplementary thereto and amendatory thereof, and that said Detroit Citizens' Street Railway Company hereby exercises the option given it by section 2 of said ordinance of November 24, 1862, to construct the new and additional street railway routes which are described in and formed, fixed and determined by the terms of the ordinance which passed its third reading by the common council of the city of Detroit on Wednesday, the twenty-eighth day of November last, which said ordinance is entitled as follows: 'An ordinance granting to Greene Pack, Albert Pack and Henry A. Everett, their successors
12 and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated,' and stands ready to furnish all reasonable guaranty or security for the prompt construction of the routes specified in said last-mentioned ordinance.

And you are further notified that said Detroit Citizens' Street Railway Company will insist upon its rights to construct said new and additional routes under and in accordance with the option given it by said ordinance of November 24, 1862.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
[SEAL.] By J. C. HUTCHINS, *Vice-President.*

Attest: J. R. STIRLING, *Secretary.*

Detroit, December 4, 1894."

Said mayor and common council disregarded your orator's rights in the premises and refused to reconsider the vote by which said ordinance was passed and caused the ordinance to be submitted to the mayor for his approval.

11. That on the 4th day of December, 1894, the said ordinance was approved by Hazen S. Pingree, the mayor of the city of Detroit, and the same has been duly published as provided by the charter of the city of Detroit, and so far as your orator is informed and believes all the proceedings of said common council in
13 the enactment of said ordinance were regular in form and in so far as it can be lawfuliy enacted the said ordinance has the form, force and effect of a law.

12. On the 10th day of December, 1894, the said Greene Pack, Albert Pack and Henry A. Everett, for the purpose of accepting said ordinance of December 4, 1894, organized under the street railway act of 1867 a corporation to be known as "The Detroit railway." Articles of association were filed in the office of the secretary of state fixing the capital stock of the corporation at $1,000,000, and one-half of which is subscribed upon the articles by the following subscribers and stockholders:

Greene Pack	1,250	shares,	$125,000
Albert Pack	1,125	"	112,500
Charles L. Pack	125	"	12,500
Henry A. Everett	2,000	"	200,000
C. W. Wason	500	"	50,000
			$500,000

It is recited in the articles that $100,000 of the capital stock has been paid in. The board of directors of the corporation consists of all of the above-named stockholders.

13. On the 11th day of December, 1894, your orator served on the said Detroit railway the following notice:

"To the Detroit railway:

"You are hereby notified as your promoters and the city of Detroit have already been notified that the Detroit Citizens' Street Railway Company claims that the ordinance of the common council of the city of Detroit, approved by the mayor December 4, 1894, granting to Greene Pack, Albert Pack and Henry A. Everett, their associates, successors and assigns, when organized into a street railway corporation under the name of the Detroit railway, consent, permission and authority to construct, use, maintain and
14 operate street railways on certain specified streets in the city of Detroit, is a plain, intentional and capricious violation of the contract rights of the Detroit Citizens' Street Railway Company under and by virtue of the ordinances constituting chapter 109 of the Revised Ordinances of the City of Detroit of 1890.

You are further notified that if you pay any money to the city of Detroit for the purpose of accepting said ordinance of December 4, 1894, or lay out or expend any money for the purpose of construct-

ing the street railways specified in said ordinance or in building a plant for the operation of the same, you will do so at your own peril and risk of eventful loss, as the undersigned proposes to insist on all its legal rights in the premises.

Detroit, December 11, 1894.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*"

14. At a session of the common council of the city of Detroit, held on the evening of December 11th, 1894, the said Detroit railway accepted said ordinance of December 4, 1894, by filing with the city clerk a written acceptance and by depositing with the city controller a bank certificate of deposit for $50,000, and by submitting to the common council for its approval a bond in the penal sum of $100,000, all in compliance with and in the manner and form prescribed by said ordinance.

The said Detroit railway has publicly threatened to immediately proceed with the construction of said proposed street railway lines, and for that purpose to take possession of and to tear up the streets of the city of Detroit specified in said ordinance, to the end that the said proposed street railways may be in operation at an early date, and your orator is fearful that it will do so, unless restrained
15 by the timely interposition of this court.

15. In laying out the street railway lines and routes of the said Detroit railway, the parties to the ordinance of December 4, 1894, intentionally, wantonly and capriciously selected such streets and routes as would be most injurious to the existing street railway lines of your orator, and most prejudicial to the right of your orator under said section two of the ordinance of November 24, 1862, to build such extensions and new lines as the common council may from time to time desire to have constructed. The main object and purpose of the city of Detroit, as is well known by the Detroit railway and its stockholders, in adopting and agreeing to the ordinance of December 4, 1894, is to oppress and harass your orator, and to so annoy and antagonize your orator as to force it to relinquish the rights secured to it and its creditors and stockholders by the existing contract between it and the city of Detroit, and to deprive it and them of the benefits of the final decree and adjudication of the Federal courts secured by your orator in the unjust, oppressive and litigious suit prosecuted by the city of Detroit against your orator as aforesaid.*

16. Subject to the existing contract between the city of Detroit and your orator, it is ready and willing to construct and operate all of the street-car lines specified in the ordinance of December 4, 1894, or such parts and portions thereof as the common council may desire to have constructed as additions to, or enlargements of, the present street-car system of your orator; but your orator shows that

*An additional paragraph to stand as No. 15½ was inserted in the bill as an amendment, January 14, 1895.

if the said proposed street-car lines are constructed and operated by the Detroit railway as an independent system as proposed, your orator, as well as the general public, will suffer irreparable injury and loss.

16 Your orator is without any appropriate, full or adequate remedy at law, and is only relievable in a court of equity, where matters of this nature are properly cognizable.

17. The property and rights involved in this suit, and for the protection of which this bill is filed, exceed in value the sum of one hundred dollars.

18. Your orator respectfully shows and submits unto the court that the contract between the parties contained in said section two of the ordinance of November 24, 1862, was one it was competent for the parties to enter into, and the ordinance of December 4, 1894, making a grant of the local consent to the defendant, The Detroit Railway, is, under the constitution and laws of Michigan, a State law within the meaning of the Constitution of the United States and of the fourteenth amendment thereto, and your orator claims the protection of the provision of the Constitution of the United States, that no State shall pass any law impairing the obligation of contracts, and of the provisions of the fourteenth amendment, that no State shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.*

Prayer for Relief.

In consideration of the premises, your orator prays that the said city of Detroit and the Detroit railway may be required to answer this bill fully and particularly, paragraph by paragraph, and without oath, answers under oath being hereby expressly waived,

17 and that it may be adjudged and decreed by the court that said ordinance of December 4, 1894, is a violation of the contract between the city of Detroit and your orator as contained in chapter 109 of the Revised Ordinances of the City of Detroit of 1890, and that as against your orator said ordinance of December 4, 1894, is void not only as a violation of the contract rights of your orator, but also because it is in conflict with the Constitution of the United States, and with the fourteenth amendment, as hereinbefore stated; that the said defendants may also be temporarily and perpetually restrained and enjoined from executing or in any way carrying out said ordinance of December 4, 1894, and from constructing or commencing to construct any of the street railways specified in the said ordinance, or any part of said street railways; and that your orator may have such other or further relief in the premises as the nature of the case and equity and good conscience may require.

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*Paragraphs 19, 20, 21 and 22 were added to the bill as an amendment, December 3, 1895.

Prayer for Process.

Your orator prays that process for the appearance of said defendants, The City of Detroit and The Detroit Railway, may issue according to the rules and practice of this court, and that a writ of injunction may be issued out of and under the seal of the court, restraining and enjoining the said defendants and their officers, agents or employés, until the further order of the court, from executing or attempting to execute or carry out the ordinance of December 4, 1894, and from constructing or attempting to construct or operate any of the street railway lines specified in said ordinance, or
18 any portion of the same, and that on the final hearing in this cause said injunction may be made perpetual, etc.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

FRED. A. BAKER,
ASHLEY POND, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 13th day of December, 1894, before me, a notary public in and for said county, personally appeared J. C. Hutchins and made oath that he had heard read the above and foregoing bill of complaint, subscribed by him as the vice-president of the complainant therein, and knows the contents thereof, and that the same is true of his own knowledge except the matters and things therein stated to be on information and belief, and as to those matters, he believes the same to be true.

EDWARD A. STRICKER,
Notary Public, Wayne County, Michigan.

EXHIBIT "A."

Chapter CIX.

Detroit City Railway Company.

(Approved November 24, 1862.)

Whereas, Cornelius S. Bushnell, John A. Griswold, Nehemiah D. Sperry, Eben N. Wilcox, their associates, successors and
19 assigns, propose to organize as a body politic and corporate, under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 13th, 1855 (Laws of 1855, p. 338), and act or acts amendatory thereto, for the purpose of constructing and operating in and through the streets of the city of Detroit, city or street railways; therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted, and duly vested in Eben N. Wilcox, and his associates, who may be approved by the council, their successors and assigns, organized into a corporation, under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks, and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages, during all the term hereinafter specified and prescribed. and in the manner, and upon the condition set forth in this ordinance. (As amended December 27, 1862.)

SEC. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River, and Brush or Beaubien streets; and from Jefferson avenue, through Brush or Beaubien streets, to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street; and through Fort street, to the western limits of the city; and through such other streets and avenues in said city, as may, from time to time, be fixed and determined by vote of the common council of the said city of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance: And provided, the corporation does not assent, in writing, within thirty days after the passage of said resolution of the counsel, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense: Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue, shall each run into and connect with the Woodward Avenue railways, in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue; provided, always, that said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance, may elect. (As amended January 12, 1863.)

SEC. 3. The railways through all the streets shall be laid in the center thereof, if on a single track, and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street, to enable two cars to pass on opposite tracks, and leave a space between of at least eighteen inches, and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels: Provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first: And provided further, that in all streets which are not paved, or where

plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient,
21 under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon for public use, they may, at any time thereafter, build a second track, so that they do not interrupt the running of their cars on the first completed track: Provided, the consent of the counsel is first obtained. (As amended January 11, 1875.)

SEC. 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof, as now established, or as they shall from time to time be re-established or altered; and in case of grading, paving, or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees, and in all streets, or parts of streets, which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city engineer. The grantees, and their assigns, shall be required to keep the surface of the streets, inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt and filth, cleared and removed from the same, at the expense of the grantees: Provided, however, that upon the paved portion of said streets, the materials for repaving shall be supplied at the expense of the city. (As amended January 12, 1863.)

SEC. 5. The routes of all said railways shall commence in the Woodward Avenue road, at Campus Martius; from thence running on their several courses to the outer limits of the city: Provided, that in collecting fare, those portions between Atwater
22 through Brush or Beaubien streets, and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets, on Jefferson avenue and Woodbridge street, shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, shall pay only one fare. (As amended January 12, 1863.)

SEC. 6. Said railway on Woodward avenue, or Witherell street, to Park lot sixty-two, through Jefferson avenue to the eastern limits, and through Jefferson avenue to Woodbridge, through Woodbridge to Third, and up Third to Fort, and through Fort street to the western limits of the city, shall be completed within six months from the thirty-first day of March, A. D. 1863; and through Gratiot street to the easterly line of the B. Chapoton farm, shall be completed within three years from and after the thirty-first day of March, A. D. 1863; and through Grand River to the easterly line of the Woodbridge farm; through Michigan avenue to Thompson street, shall be completed within two years from and after the thirty-first day of March, A. D. 1863; and the remainder thereof at such times as the public necessity may require: Provided, that

no such railway shall be required to be laid through any part of such routes, which shall not be worked up to the established grade thereof, until the city shall have completed such work.

SEC. 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe: Provided, always, that said council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve
23 hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railways shall be run for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

SEC. 8. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars, within the meaning of the preceding section.

SEC. 9. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SEC. 10. No car shall be allowed to stop on a crosswalk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SEC. 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 12. The grantees, or their assigns, shall employ careful, sober, and prudent agents, conductors and drivers, to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors, and drivers, to keep vigilant watch for all trains, carriages, or persons on foot, and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible.

24 SEC. 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SEC. 14. Conductors shall announce to the passengers the names of the principal squares and streets, as the cars reach them.

SEC. 15. The cars shall, at all times, be entitled to the track, and any vehicles upon the track of said railways shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of

said city of Detroit; and costs of prosecution shall not be at the expense of the city.

SEC. 16. The cars, after sunset, shall be provided with colored signal lights, a red light in front, and a green light in the rear.

SEC. 17. Wherever gas or water pipes, or sewers, are now laid in the streets herein specified, and through which railways are to pass, the said railways must be laid down and maintained subject to the right now in the city, and the gas company and the board of public works, to take up or remove said pipes or sewers, in such a manner as not unnecessarily to damage or injure said railways or their use, without claim against the city, gas company, or board of public works; and the common council expressly reserves to itself the right hereafter to lay down, or to permit to be laid down, and repaired in said streets, gas or water pipes, and sewers, whenever the public or private convenience may require; the said gas or water companies, or private individuals, who shall take up pavement for the purposes aforesaid, being always required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

SEC. 18. If said grantees, or their assigns, shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted, shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof provided the council does not extend the time: Provided, that if said grantees shall be delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance, or by the contrivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance. (As amended December 27, 1862.)

SEC. 19. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations, as may from time to time be deemed necessary to protect the interest, safety, welfare, or accommodation of the public, in relation to said railways.

SEC. 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years, from and after the date of its passage.

SEC. 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes, bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete, on or before the first day of October, A. D. 1863; and if the said railways shall not then be completed the sum so deposited shall be forfeited to the city: Provided, however, that if said grantees, or their assigns, cannot procure the requisite amount of rail of the Philadelphia, or other suitable pattern, to build said railways, within the time specified with a suitable and competent force,

then the time shall be extended until such rail can be ob-
26 tained, and laid with a suitable and competent force: And provided further, that the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given that the iron rail cannot be procured. (As amended January 12, 1863.)

SEC. 22. The said grantees, and their assigns, shall pay to the treasurer of the city of Detroit, annually, fifteen dollars on each and every passenger, or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license, for the use of the city after the term of five years from and after this date.

SEC. 23. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate, under the said act of the legislature of the State of Michigan, or charter thereof, all the powers and privileges granted and conferred to and upon them, by this ordinance, shall be given, granted and duly vested in said corporation, without any further action, consent, permission or authority of the common council whatever.

SEC. 24. All ordinances, or parts of ordinances, heretofore made, ordained and passed, inconsistent with the provisions of this ordinance, are hereby repealed.

SEC. 25. Any wilful violation of, or failure to comply with the provisions of this ordinance, by said railway company, or by any agent, conductor, driver, or any person in the employ of said company shall be punished by a fine not to exceed one hundred dollars and costs; and in the imposition of any such fine and costs, the court may make a further sentence that the offender be committed to the county jail or to the Detroit house of correction, until the payment thereof, for any period of time not exceeding six months. (As amended March 29, 1864.)

(Approved August 19, 1863.)

27 SEC. 26. Permission is hereby given to the Detroit railway to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section twenty-one of said ordinance).

SEC. 27. As a condition of the acceptance of this permission, the said Detroit city railway may and shall complete its road and track on Fort street, Michigan avenue, and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864; and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

SEC. 28. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively,

to leave the grade track of said plank road clear, and allow teams and vehicles to pass between said track and said plank road; and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the "T" rail, which is used for street railways, and weighs not less than thirty-three pounds to the yard.

SEC. 29. The said railway is hereby authorized to extend its track, and run its cars, through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center, as they shall agree upon with the Michigan Central Railroad Company.

SEC. 30. The tracks upon Jefferson avenue, Woodward
28 avenue, Michigan avenue and Gratiot street shall each be considered and run as one route, and subject its passengers to the payment of a single fare each: Provided, however, that all cars running north of Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue shall be considered as making a portion of each of said routes respectively.

SEC. 31. The Detroit city railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real-estate owners as are affected thereby, may, and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood cemetery, and run its cars thereon at such times as will accommodate the public: Provided, however, no person shall be charged more than one cent either way on this track; and said railway are also authorized to run a track and their cars to Mount Elliott cemetery, along Mount Elliott avenue, and charge the same rate of fare as to the said Elmwood cemetery.

SEC. 32. The Detroit city railway is hereby authorized to build its track and run its cars from its track on Jefferson avenue, upon and along Randolph street southerly to Atwater street, and thence along Atwater street easterly to Brush street; and, as said track approaches the Detroit and Milwaukee depot, the said railway may turn the same onto the southerly side of said Atwater street so as to run said cars up to the sidewalk in front of the office buildings of the Detroit and Milwaukee Railway Company. (Approved October 7, 1863.)

(Approved January 4, 1864.)

SEC. 33. Permission is hereby given to the Detroit city railway to build its road and track on and through Fort street from
29 Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street as aforesaid.

SEC. 34. Permission is also hereby given to said railway to build its road and track along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city; and such building shall relieve

said railway from its obligation to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city; and the said railway is hereby authorized to build its track on Fort street, from the railroad crossing, through Stanton street and River road to the city limits, with "T" rail, similar and of equal weight to that used on Michigan avenue.

SEC. 35. The road and track of said railway, from said westerly limits, through said River road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

SEC. 36. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track by constructing a branch track from their main track to said car-house, either through Second street or from Third street, through the alley, between Jefferson avenue and Front street. Said company is also authorized to connect their car depot and stables on St. Antoine street with their tracks on Jefferson avenue by constructing a branch track from St. Antoine street to said car depot and stables; such branch track to be a single track only, and to intersect said
30 Jefferson Avenue track at right angles and by means of turn-tables, in the same manner as the tracks of said company connect with each other at the intersection of Jefferson and Woodward avenues. (As amended December 15, 1874.)

SEC. 37. The time for completing the road of said company on Gratiot street is hereby extended to November 1, 1865: Provided, however, that said company shall extend their track as far as Chene street on or before the twentieth day of November next. (Approved October 8, 1864.)

SEC. 38. The track of said company shall be laid on that part of Gratiot street which is occupied by the Plank Road Company, in such position as shall be agreed on between the railway and Plank Road companies: Provided, however, that unless the line agreed on shall be along the center of said street, such agreement shall be first reported to and approved by the council. (Approved October 8, 1864.)

SEC. 39. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue, in accordance with the provisions of the ordinance above referred to, being section 3 of this chapter. (Approved January 11, 1875.)

SEC. 40. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and throughout Jefferson avenue, in the city of Detroit: Provided, expressly, that if hereafter the pavement on said avenue shall be extended, or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track and between the tracks,
31 and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper

condition and repair, and the two inner rails shall be laid equidistant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council. (Approved July 8, 1873.)

(Approved August 20, 1877.)

SEC. 41. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the city of Detroit. It is, however, expressly understood and provided: That, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave, or repave all the portion of said avenue lying within the rails of each track and between the tracks, and shall also keep their portion of the said tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair; and the two inner rails of its said tracks shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

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SEC. 42. Any provision or condition in the ordinance creating said company, or of any ordinances amendatory thereof, contravening the provisions of the foregoing section are hereby repealed.

Additional right of way.

(Approved November 14, 1879.)

SECTION 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street within sixty days from this date; and from Chene street to the city limits within such period as the common council shall by resolution hereafter declare to be necessary.

SEC. 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue, from its present terminus on Jefferson avenue, to Atwater street; thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot. And the line on Congress street, heretofore

operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus through Randolph street to Atwater street, which extensions are hereby declared to be additional routes, for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the City Railway Company, consent and authority is hereby given.

SEC. 3. The ordinances of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit & Grand Trunk Junction Street Railway Company and to
33 the Central Market, Cass Avenue & Third Street Railway Company authority to construct and operate street railways through certain streets of the city of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting to the Detroit City Railway Company certain rights therein set forth.

SEC. 4. On the 1st of July and January in each half year from the 1st of January, 1880, the Detroit City Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent.* during the period of this ordinance, on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year, as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts. On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by the said company shall run, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all material and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their roadway or track, and the spaces between the lines of double tracks and all switches, said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobble stone or some similar durable and proper material to be approved by the common council.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving
34 under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order.

SEC. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from this date. And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily on such occasions as the common council may, by resolution, from time to

*See supplementary ordinance, passed January 4, 1887.

time designate, to accommodate public processions or any other like convenience.

SEC. 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the city clerk of Detroit by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company and the Central Market, Cass Avenue & Third Street Railway Company, or their successors; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

SEC. 7. The right to amend or repeal this ordinance, in case of its violation by said company or companies, is expressly reserved.

Right of way in Farrar street.

(Approved December 11, 1880.)

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable half switch, on Farrar street, in the city of Detroit, from a point ten feet north of the north line of Bates street, extended to Monroe avenue, and so as to connect with the track of said company on said avenue.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Double track in Griswold street.

(Approved July 8, 1882.)

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Griswold street, from State street to Larned street, and so as to connect at said streets with the present main tract on said Griswold street: Provided, that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the said railway

company shall have filed in the city clerk's office its written acceptance of the terms thereof.

36 Double track to Michigan Central railroad depot.

(Approved March 29, 1884.)

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Woodbridge street from the present terminus of its double track near Second street westward to the east line of Third street, and so as to connect with the main track on said street in the form of a Y, and to remove the present track across Third street, and the turn-table at the terminus thereof, and relay the same across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street, thirty feet west of the west line of Third street.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Additional track in Campus Martius.

(Approved July 21, 1884.)

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is
37 hereby authorized and permitted to lay, construct, use and operate an additional track through the Campus Martius of said city, extending from the present termination of the double track of said company, near the northerly line of said Campus Martius, southerly to the north line of Fort street, extended so as to form one continuous double track for said company across the Campus Martius: Provided, that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Brush Street line.

(Approved January 5, 1885.)

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinance, viz: Commencing at a point on Ferry street, adjacent to the Detroit & Milwaukee junction, running thence along Ferry street to Russell street,
38 thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue, and thence over the present track of the Detroit city railway on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

SEC. 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in section 1 of this ordinance on or before the first day of December, A. D. 1885, and said grantees shall, on or before the first day of February, deposit with the controller of said city the sum of five thousand dollars, in money or United States stocks or in treasury notes, which said deposit shall be forfeited to the city of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance. Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the controller shall refund to said grantees the amount so deposited as forfeit with him. Provided, that should such grantees be prevented from completing said railway by said December 1, 1885, not due to any fault or action of said grantees then the said grantees may be granted an extension of time within which to so complete said railway.

SEC. 3. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

39 SEC. 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the

city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the city of Detroit in the sum of $50,000, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

Extension on Russell street.

(Approved October 9, 1885.)

SECTION 1. Subject to all of the provisions of and requirements of said chapter 98, of the Revised Ordinances of 1884, of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862," and of supplements and amendments thereto, the Detroit city railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Russell street to Ferry street connecting with the present track of said railway northerly through Russell street to the south line of the Lake Shore and Michigan Southern railway crossing, with suitable switches, turnouts and turn-tables.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office the written acceptance of the terms hereof.

(Approved November 19, 1889.)

SECTION 1. Subject to the provisions and requirements of chapter 98 of the Revised Ordinances of 1884, and of all ordinances supplementary and amendatory thereof, and of the ordinance approved January 5, 1885, authorizing the Detroit City Railway Company to construct and operate a street railway on Brush, Russell and other designated streets in said city, permission and authority are hereby given to said Detroit City Railway Company to extend its single track with suitable switches, on Russell street from Ferry avenue to the city limits and to operate and use the same as a part of the Brush and Russell Street railway line.

SEC. 2. The laying of said track shall be completed within thirty days from the passage of this ordinance.

Trumbull Avenue line.

(Approved July 31, 1885.)

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto and for other purposes," approved November 14, 1879.

The Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with

suitable switches, turnouts and trun-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use, and to operate thereon railways cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue; thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the Congress and Baker street railway on Seventh street southerly to Congress street, easterly along Congress street to Randolph street and
41 southerly through Randolph street to the terminus of said road at Atwater street.

SEC. 2. The said Detroit city railway shall complete that portion of said route from the intersection of Howard and Seventh streets to Warren avenue and have the same in full operation within one year from the date of the passage of this ordinance.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a good and sufficient bond to the city of Detroit in the sum of fifty thousand ($50,000) dollars, to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Extension of double track on Michigan avenue to Twenty-fifth street.

(Approved September 1, 1886.)

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Thirteenth-and-a-half street to Twenty-fifth street, in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

42 SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof, and a written agreement to pave said street in accordance with the terms of its proposition as reported upon to the board of aldermen by a special committee August 10, 1886.

Relative to taxation and to adjust past taxes.

(Passed over veto January 4, 1887.)

SECTION 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expiration of each half year during the entire period above mentioned the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to said city treasurer the percentage so found to be due.

SEC. 2. From the first day of July, 1882, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall also pay the city of Detroit such taxes for municipal purposes as have been up to this date and shall be thereafter levied and assessed upon the lots and parcels of land and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner and shall be payable at the same time as other city taxes on lands.

SEC. 3. In adjusting the amount due under the foregoing sections from the first day of July, 1882, to the thirty-first day of December, 1886, the railway shall be credited with all sums heretofore
43 paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such balance as may be found due forthwith upon its ascertainment. Thereupon all suits and proceedings between the city and railway shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SEC. 4. The above-mentioned percentage payments and the tax on lands provided for to accrue from January 1st, 1887, to the end of the franchise of said railway are to be paid by said railway and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been or may be levied, assessed or imposed under any present or future law or authority. If hereafter said railway shall be either directly or indirectly charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway upon the amount of the percentage payments to become due under the ordinance; and the obligation to make such percentage payments shall be satisfied and discharged to that extent; and in no event shall said railway be liable to pay under any form of tax, license or charge any sums in excess of said percentage and the tax on the lands of said railway as above provided. Provided, however, that nothing herein contained shall be construed as a consent on the part of the Detroit city railway to the levying or collecting of any other or further tax, license or charge than the tax on the gross receipts, hereinbefore provided for, and

the tax on its lands, as hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of the said Detroit city railway.

44 SEC. 5. Subject to the provisions of this ordinance, which are only intended to change the provisions of the ordinance of November 14, 1879, as to the percentage on gross receipts and to modify existing ordinances in reference to the charges by taxation and percentages on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

SEC. 6. This ordinance shall take effect when the Detroit city railway has filed its written acceptance of the same with the city clerk.

Extension of Third Street line to Holden road.

(Approved July 26, 1887.)

SECTION 1. Subject to all requirements and provisions of chapter 50 of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, and ordinances supplementary thereto, the Detroit city railway is hereby authorized, permitted and required to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables, in and through the following streets and avenues in the said city of Detroit, and the same keep, maintain and use and to operate thereon street railway cars, to wit: From the present terminus of the line or track of said Detroit city railway on Third street or avenue in said city, along Third street or avenue to the Holden road; thence in a westerly direction along the center of said Holden road to the point where the track of the Detroit & Bay City Railroad Company crosses said Holden road.

45 SEC. 2. That portion of said route from the present terminus of the track on Third street or avenue to the Holden road is to be constructed and laid contemporaneously with the paving of said Third street or avenue to the Holden road; and that portion of said route on the Holden road to be constructed and laid before the first day of January, A. D. 1888, and the whole of said extension to be in operation by January 1, 1888, in connection with and as a part of the line of said Detroit city railway now in operation on said Third street or avenue.

SEC. 3. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the city of Detroit in the sum of twenty-five thousand dollars, to be approved by the common council, and conditioned for the faithful performaace of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days after the approval of the ordinance.

Extension of Trumbull Avenue line.

(Approved October 27, 1888.)

SECTION 1. Subject to all the provisions and requirements of chapter 98 (of the Revised Ordinance of 1884, of the amendments thereof, and) of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and of supplements and amendments thereto," the Detroit city railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Trumbull avenue from the southerly line of Warren avenue, connecting with the present track of said railway, northerly through Trumbull avenue to the southerly line of the Lake Shore & Michigan Southern railway crossing, with suitable switches, turnouts and turn-tables.

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SEC. 2. The said Detroit city railway shall have said track completed and the same in full operation within sixty days from the date of the passage of this ordinance.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute and deliver a good and sufficient bond to the city of Detroit in the sum of ten thousand ($10,000) dollars to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

East Fort Street line—Chene Street line—Cass Avenue extension—Double tracks in Jefferson avenue and Gratiot avenue—Mack Street line.

(Approved January 3, 1889.)

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the city of Detroit for the year 1884 and of amendments thereof and supplements thereto, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a street railway with convenient tracks for turnouts, side-tracks, curves and switches in and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in chap-

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ter 98 of the Revised Ordinances of 1884, and in the said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street east turns on to Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street east to Mt. Elliott avenue, thence along said Mt. Elliott avenue to the Jefferson avenue double track, thence along said Jefferson avenue double track to the easterly limits of the city.

Also, to extend its track on Cass avenue from where it now turns on to Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of
48 the city of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street railway track in, along, and through Mack street, from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use, and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue, near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

Also permission is hereby granted to the said Detroit city railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge, and approaches thereto, to Belle Isle park, to said park, with all the privileges and rights which may be granted to any other street railway.

SEC. 2. The track hereby authorized on Congress, Brush and Fort street east shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of

the passage of this ordinance. The track authorized to be
49 constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the common council.

SEC. 3. Permission and authority is hereby given to the said Detroit city railway to run its cars at a rate of speed not exceeding ten miles an hour, and is hereby required to run thereon at an average speed of not less than six miles per hour, and whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said city of Detroit upon any or all of its said lines now in use and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the board of public works.

50 SEC. 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit city railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit city railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to wit:

A. It shall carry passengers from its Cass Avenue and Third Street Trumbull Avenue, Michigan Avenue, and Congress and Baker Streets lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be entitled to be transferred at Fort street

to and conveyed by cars running on the proposed line on Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot and Michigan Avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot
51 Avenue line shall be entitled to be transferred at Chene street to said Chene Street line and to be carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride over said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge, in reverse direction, over the Fort Street east, Chene Street and Gratiot Avenue lines for a single fare of five cents for one continuous trip.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs "A," "B" and "C" of this section.

E. It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines and shall run the cars on the said Woodward Avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

SEC. 5. All rights conferred and obligations imposed under
52 the terms of this ordinance shall continue during the period fixed by the ordinance, approved November 14, 1879, that is to say until November 14, 1909.

SEC. 6. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 7. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same, and shall execute a bond to the city of De-

troit, in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bond shall be filed within thirty days of the approval of this ordinance by the mayor.

Extension of line on Michigan avenue to westerly city limits.

(Approved April 5, 1889.)

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit, the year 1884, and of an ordinance supplementary to an ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereof approved November 14, 1879, and all ordinances supplementary thereof and in amendment thereto, the Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a double track on and through Michigan avenue, in said city of Detroit, from the present terminus of its double track on Michigan avenue, westerly to the city limits.

53 SEC. 2. Said track shall be laid contemporaneous with the pavement of said Michigan avenue, and only so far as said street is, or may hereafter be paved, and the expense of paving the portions of said street between the outer rails of said track shall be paid by said company.

EXHIBIT "B."

This exhibit is a map of the city of Detroit, showing the present street railway lines in the city. A copy of it will be exhibited at the hearing.

EXHIBIT "C."

To the honorable the common council of the city of Detroit:

The undersigned represent that they desire to build, maintain and operate a street railway or street railways in, upon and along the streets, avenues and public places hereinafter named in the city of Detroit, and perhaps other streets, avenues and public places hereinafter named in the city of Detroit, and perhaps other streets, avenues and public places therein, and, they, therefore, respectfully petition that consent, permission and authority be granted to them, their associates, successors and assigns, to build, maintain and operate a street railway or street railways in, upon and along said streets, avenues and public places and in such other streets, avenues and public places as may be agreed, upon such terms and conditions and under such regulations as shall be acceptable to the contracting parties.

The streets, avenues and public places in, upon and along
54 which the undersigned petition for leave to build, maintain and operate a street railway or street railways are the following:

Upon and along Warren avenue from the westerly city limits, eastwardly to the easterly city limits, or as near thereto as may be practicable; upon and along Fourteenth avenue from the northerly city limits to Bagg street, thence upon and along Bagg street eastwardly to the junction of Cass avenue and Clifford street; thence upon and along Clifford street southerly and eastwardly to Griswold street; thence upon and along Griswold street southerly to State street; thence upon and along State and Gratiot streets eastwardly to Randolph street; thence upon and along Randolph street northerly to Adams avenue; then upon and along Adams avenue eastwardly to Beaubien street; thence upon and along Beaubien street northerly to Horton street; thence upon and along Horton street eastwardly to Oakland street; thence upon and along Oakland street northerly to the city limits; also upon and along Harper avenue, from a point at the intersection of Field avenue and Harper avenue, westerly to Mt. Elliott avenue; thence upon and along Mt. Elliott avenue southerly to St. Paul street; thence upon and along St. Paul street easterly to Concord avenue; thence upon and along Concord avenue southerly to Jefferson avenue; thence upon and along Jefferson avenue to a point on said avenue within seventy-five feet of the easterly line of the boulevard, or Frontenac avenue; and also such other divergent or connecting lines as may be agreed.

They further represent that they intend and expect, upon the grant of the consent, permission and authority herein asked, to duly organize a body corporate and politic under the laws of this State relative to street railways for the purpose of effectuating the objects of the grant.

They intend and expect to build a rapid-transit, electric
55 railway, upon the most approved plan and with the best of modern machinery and appliances.

They will be ready to begin the work of constructing said railway or railways within thirty days after the approval of the ordinance authorizing the building of the same, and upon acceptance of such ordinance will agree to build and complete one-half of such railway or railways by November 1, 1895, and the remainder by November 1, 1896, or sooner if practicable.

They are ready and willing to give adequate security in the usual manner for the performance of the terms and conditions of any undertaking assumed by them. They further ask that this petition be referred to an appropriate committee to whom the undersigned wish to submit, and will submit, an ordinance for their consideration.

Respectfully submitted.

GREENE PACK.
ALBERT PACK.
HENRY A. EVERETT.

Detroit, Mich., November 20, 1894. (Copy.)

EXHIBIT "D."

An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors, and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain, and operate street railways on certain streets, avenues, and public places in the city of Detroit and on such other streets, avenues, and public places as may be hereinafter designated.

56 Be it ordained, by the people of the city of Detroit:

SECTION 1. That consent, permission and authority are hereby granted to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors or assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, to construct, maintain, use and operate single and double track street railways, with all necessary and convenient turnouts, turn-tables, side tracks, switches and connections in and along the streets, avenues and public places in the city of Detroit, as hereinafter provided, and the same to keep and maintain and to operate thereon street railways for and during the term hereinafter specified and in the manner and upon the conditions set forth in this ordinance.

SEC. 2. That the said grantees, their associates, successors and assigns are hereby authorized to construct, maintain and operate street railways in, upon and through the following streets, avenues and public places, to wit:

(*a.*) A double track in, along and through Warren avenue from the western city limits, eastwardly to Beaubien street; thence along and upon Beaubien street southerly to Forest avenue; thence along and upon Forest avenue easterly to the city limits, or as near thereto as may be practicable.

(*b.*) A double track in, along and upon Fourteenth avenue from the northerly city limits to Bagg street; thence a single track in, along and upon Bagg street eastwardly to Cass avenue; thence in, along and upon Cass avenue southerly to the head of Clifford street; thence in, along and upon Clifford street southerly to the intersection of Henry street. Also, a single track on Fourteenth avenue connecting with the double track at the intersection of Bagg street southerly to Locust street; thence in, along and
57 upon Locust street eastwardly to Grand River avenue, crossing said avenue and extending eastwardly in, upon and along Henry street to Clifford street, connecting with a double track at said intersection; thence a double track in, along and upon Clifford street southerly and eastwardly to Griswold street; thence along and upon Griswold street to State street; thence in, along and upon State street and Gratiot avenue, eastwardly to Miami avenue; thence in, along and upon Miami avenue northwesterly to Witherell

street; thence in, along and upon Witherell street northerly to Adams avenue; thence in, along and upon Adams avenue eastwardly to Hastings street. Also a single track connecting with the double track on Adams avenue northerly on Beaubien and Hastings streets respectively to Custer avenue; thence westerly from Hastings and easterly from Beaubien street to Custer, uniting with a double track on Oakland avenue; thence northerly in, along and upon Oakland avenue to the city limits.

(*c.*) Also a single-track railway with the necessary turnouts, switches and sidings, in, along and upon Harper avenue from a point at the intersection of Field and Harper avenues westerly to Mt. Elliott avenue; thence in, along and upon Mt. Elliott avenue southerly to Forest avenue, extending thence by double track southerly on Mt. Elliott avenue to Kercheval avenue; thence in, along and upon Kercheval avenue eastwardly to Concord avenue; thence in, along and upon Concord avenue southerly to Jefferson avenue; thence in, along and upon Jefferson avenue eastwardly to a point on Jefferson avenue seventy-five feet east of the easterly line of the Boulevard or Frontenac avenue.

(*d.*) Also a double-track railway connecting with the double track at the intersection of Adams avenue and Hastings street, in,
58 along and upon Hastings street southerly to Sherman street; thence easterly by single track, in, along and upon Sherman street to Joseph Campau avenue, connecting with a double track thereon. Also a single track connecting with the double track at the intersection of Hastings and Sherman streets southerly on Hastings street to Catherine street; thence in, along and upon Catherine street eastwardly to Joseph Campau avenue: thence in, along and upon Joseph Campau avenue northerly, uniting with the line on Sherman street, forming a double track on Joseph Campau avenue, to Waterloo street; thence by single track in, along and upon Waterloo street eastwardly to Mt. Elliott avenue, connecting with the double track thereon. Also a single track extending from the intersection of Joseph Campau avenue and Waterloo streets northerly on Joseph Campau avenue to Hendricks street; thence in, along and upon Hendricks street eastwardly to Mt. Elliott avenue, connecting with the double track thereon.

(*e.*) Also a single-track railway with the necessary turnouts, switches and side tracks in, along and upon Vinewood avenue from a point at the intersection of Warren and Vinewood avenues southerly to Porter street; thence in, along and upon Porter street eastwardly to Twenty-fourth street; thence in, along and upon Twenty-fourth street southerly to the Detroit river.

(*f.*) Also such tracks as may be necessary to connect operating tracks with barns, power-houses, storage-sheds, yards and repair shops, to be constructed under the supervision and subject to the approval of the board of public works.

(*g.*) Said grantees, their associates, successors and assigns are hereby granted all the privileges and rights which may be granted to any other street railway to run its cars from any of its lines over

and upon any street railway track which may be authorized
59 and constructed on any bridge and approaches thereto crossing the Detroit river to Belle Isle park.

All tracks provided for in this ordinance may be connected by suitable curves at their intersections.

SEC. 3. The railways in said streets shall be laid in the center thereof, if a single track; and, if a double track, the inside rail of each track shall be laid two feet and five inches from the center of the street to enable two cars to pass on opposite tracks and leave a safe space between them; and the gauge of the tracks shall be four feet and eight and one-half inches. Provided, that where any other street railway company may have tracks in a street through which, in order to accommodate the public, it is necessary to operate the lines of said grantees, the board of public works may direct the extension and construction of the tracks of said grantees, and the rails therein shall be laid in such portion and in such manner as shall be determined by the board of public works.

All tracks shall be laid and constructed with girder grooved rails of not less than seventy-seven and one-half pounds weight to the lineal yard, with grooves upon the inner side of the rail; the upper surface of the inner head of the rail to be not more than one-fourth of an inch below the upper surface of the outer head of the rail; and such rail and the chairs, spikes, ties and tie-plates and other fastenings thereof shall be furnished and laid by the grantees under the supervision of the board of public works. And the cost of such supervision shall be paid by said grantees through the board of public works within thirty days after the board shall have rendered a bill to said grantees for the cost of the same.

All paving or repaving or repairing of pavement upon any of the streets upon which said grantees, their associates, successors or assigns, shall hereafter construct, maintain and operate a
60 street railway, shall be done wholly at the expense of the city of Detroit, both within and without the rails of said tracks; and after being paved or repaved by the city, the same shall be maintained and kept in repair by said city of Detroit; and there shall be no charge whatever, in any form or manner, against said grantees, their associates, successors and assigns, for said repaving and repairing of said streets and pavements; provided, however, that said grantees shall never disturb said pavement or foundation, except upon being granted permission by the board of public works; and when said grantees shall so tear up, or disturb in any manner, the pavements of any streets or foundation thereof, or disturb the existing foundation which the city is repaving, said grantees shall pay to the city of Detroit, through the board of public works, all expenses of said board for supervision of said work and for repairing and replacing as before it was disturbed by said grantees, and of maintaining the same to the satisfaction of said board thereafter, until the street or trackway is repaved, provided, that such maintenance shall not exceed a term of three years if the street is not repaved by that time.

Provided, that if the common council declares it a public neces-

sity to widen the existing pavement of any street on account of the construction, maintenance or operation of any double track under and by virtue of this ordinance, the city having made such widening of such pavement, then the pavement over such portion widened, as may be so made necessary shall be done at the expense of said grantees herein named, their successors or assigns, under the supervision of the board of public works.

This section shall not be construed as relieving the grantees, their successors or assigns, from paving in accordance with the general street railway paving ordinance at their sole expense, under the supervision of the board of public works, all tracks and the
61 spaces between double tracks put by or for them into streets already paved at the time of first construction of said tracks in such paved streets; but such work shall be done by the grantees, their successors or assigns, at their sole expense, under the supervision of the board of public works, said supervision to also be at expense of the grantees, their successors or assigns, who shall restore the street to a condition satisfactory to said board of public works; and thereafter the care of such pavements shall be at the expense of the city as heretofore provided in this section.

In all unpaved streets wherein the grantees are duly authorized by the common council to construct street railway tracks under the provisions of this ordinance, the preparation of the road-bed shall be made by the grantees, their successors or assigns, the excavation to extend seven inches below the under side of the cross-ties upon which the tracks are laid; but the six inches of concrete required by the ordinance as foundation for the ties to rest upon shall be laid by and at the expense of the city at the time of the construction of the tracks; the city not being required, however, to do the paving between the tracks until the street is paved. The common council may, however, in its discretion, order the paving of the tracks on unpaved streets to be done at city expense contemporaneously with the first construction of said tracks.

The city shall keep the pavement between the rails cleaned in the same manner as the remainder of the street; but this section shall not be construed as requiring the city of Detroit to remove snow and ice from the roadways of said grantees; and all such snow or ice shall be removed by said grantees, at their expense and in such a manner as not to obstruct or endanger the ordinary use of the street for persons and vehicles, to the satisfaction of the board of public works.

62 SEC. 4. All street railways constructed, maintained and operated under and by virtue of this grant shall be constructed, maintained and operated by the overhead trolley-wire system of electricity, and said grantees, their associates, successors and assigns, are hereby authorized to erect and maintain a full electrical overhead equipment, with all the necessary poles, arms, feed, trolley and other wires necessary for a complete electrical overhead equipment and the propulsion of cars, together with the connecting poles, wires and equipment, with the power plant, barns, repair

shops and working premises of said grantees, their associates, successors and assigns.

The construction of said electrical equipment in said streets shall be subject to the supervision of the board of public works of said city of Detroit, at the grantees' expense, and the said electrical equipment shall be first class in all respects and of the most modern style and manufacture, and the cost of such supervision shall be paid by said grantees, through the board of public works, within thirty days after the board shall have rendered a bill to the said grantees for the cost of the same.

All poles within the two-mile circle shall be of iron and approved pattern; but outside the two-mile circle said poles may be of wood of uniform pattern, all subject to the approval of the board of public works. All planks or stone flags in sidewalks or sidewalk intersections cut, broken or defaced by the setting of poles, and all damages to other property, public or private, shall be paid for by the said grantees through the board of public works.

Provided, that if there shall be already on any street wherein the said grantees, their associates, successors and assigns, erect wires for the said electrical overhead equipment, a pole or poles suitable for the use of the said grantees, their associates, successors and
63 assigns, they shall, upon so being directed by the city, use the said pole or poles for their purpose, instead of erecting a new pole or poles. The board of public works shall be the judge of the suitability of the pole or poles, and prescribe the manner in which they are to be used by the said grantees, their associates, successors and assigns.

Provided, further, that if at any time the city of Detroit may desire to erect a pole or poles for the purpose of carrying electric wires for public service in the place occupied by a pole or poles owned by the said grantees, their successors, associates and assigns, then the said city of Detroit may remove the said pole or poles owned by the said grantees, their associates, successors and assigns, and replace the same by the city's pole or poles. The removing and replacing to be so done as not to interrupt the service of the railways of said grantees, their associates, successors and assigns, and the said grantees shall have the right to use the city's pole or poles so substituted to the same extent and in the same manner that it did use the pole or poles removed.

SEC. 5. It shall be the duty of said grantees, their associates, successors and assigns to provide cars of modern design for service and comfort, heated, lighted, vestibuled and carrying an approved life guard, numbered and carrying signboards by day and colored signal lights after sunset, to distinguish their respective routes. They shall be kept clean inside and out and shall not be overcrowded. Each car shall be in charge of a uniformed conductor, who shall clearly pronounce the names of cross-streets as the car approaches them.

SEC. 6. No cars shall be allowed to stop on any cross-walk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street. When cars or trains

are stopped at the intersection of streets, they shall be so
64 stopped as to leave the rear platform of the rear car slightly over the crossing. Passengers shall not enter or leave or attempt to enter or leave the cars when in motion, and conductors are hereby authorized to make all reasonable efforts to prevent them from doing so, provided, however, that this shall not be construed to justify the use of or the threat to use physical force on the part of the conductor.

SEC. 7. The cars of said grantees, their associates, successors and assigns, shall at all times be entitled to the track, and any vehicle upon the track of said railway shall turn out so as to leave the track unobstructed, and any driver of any vehicle refusing to do so shall be liable to a fine not exceeding ten dollars ($10) upon a conviction in the recorder's court of the city of Detroit, and upon the imposition of any such fine and costs the court may make a further sentence that in default of payment thereof such offender shall be imprisoned in the Detroit House of Correction for any length of time not exceeding ten days. Permits shall not be issued to move buildings or large and bulky articles on such streets in such manner as to interfere with the overhead equipment or the operation of the cars upon the railways of the said grantees, their associates, successors and assigns, unless at the time of making application the person desiring the permit shall file with the board of public works the written consent of the said grantees, their associates, successors and assigns, or a resolution granting such permission adopted by the common council and approved by the mayor. The party in whose favor such permission is granted shall pay to said grantees, their successors or assigns, any and all expenses and damages caused by the removal or disturbance of the wires, poles and premises of said railway. The permit, if issued, shall conform to the conditions as to the time and route laid down in the grantees' consent. The
mayor shall have authority to direct the temporary cessation
65 of the running of cars during parades or processions of a public nature. The fire commissioner or chief of the fire department shall also have authority to stop the running of cars in case of a conflagration when deemed expedient.

SEC. 8. Said grantees shall employ careful, sober and prudent agents, conductors and motormen to take charge of its cars while in operation.

Motormen shall keep vigilant watch for all teams, carriages or persons on foot either on the track or moving toward it, and at the first appearance of obstruction or of danger to such teams, carriages or persons the car shall be stopped in the shortest time and space possible.

All conductors and motormen shall be citizens of the United States and voters under the laws of Michigan, and ten hours shall constitute a day's employment for such conductors and motormen, to be completed inside of twelve consecutive hours.

SEC. 9. Said grantees may run their cars at a rate of speed not exceeding an average of fifteen miles per hour for the whole length of any route.

SEC. 10. The rates of fare for a single ride for a continuous trip any distance in one direction over any one of the routes hereinbefore described shall be five cents, for which the passengers shall be entitled to such ride and to a ticket or transfer check, to be given to the passenger by the conductor, on the car, good for a ride over any other line or route operated by said grantees, their associates, successors and assigns, provided such ticket is presented on the next regular car of such other route within fifteen minutes after such passenger leaves the car on which he paid the five-cent fare and received said ticket.

Said grantees shall keep on sale on their cars in service between the hours of 5.45 a. m. and 8 o'clock p. m. of each day tickets
66 to be sold in strips or packages of eight tickets for twenty-five cents, each of which tickets shall be accepted by said grantees for a single fare for any distance in either direction over the line or route on a car on which it is presented between the hours of 5.45 a. m. and 8 o'clock p. m., and a passenger presenting such ticket between said hours shall be entitled to a transfer good for a continuous ride over any other line or route of said grantees, as provided for passengers paying the full fare of five cents.

Said grantee shall also keep on sale on their cars in service between the hours of 8 o'clock p. m. and 5.45 o'clock a. m. of each day tickets to be sold in strips or packages of six tickets for twenty-five cents, each of which tickets shall be accepted by said grantee for a single fare for any distance in either direction over the line or route upon a car of which the same is presented, and a passenger presenting such a ticket shall be entitled to a transfer, good for a continuous ride over any other line or route of said grantees, as provided for passengers paying the full fare of five cents.

All children under six years of age, accompanied by parent or guardian, shall ride free.

In either of the foregoing cases, where transfers are provided for, should there be no car within the fifteen minutes, then the said passenger shall be entitled to take the first car that starts on the track to which the transfer was issued.

The rates of fare, as above provided, shall not be reduced during the period of this ordinance without the consent of said grantees, their successors or assigns; nor shall the rates of fare as above provided be exceeded during the period of this ordinance either with or without the consent of the city, and any attempt on the part of the grantees, their successors or assigns, to enforce the collec-
67 tion of fares in excess of those provided in this ordinance, either with or without the consent of the city, shall invalidate all of the provisions of this ordinance, and all rights of the grantees, their successors and assigns, to construct, maintain, use and operate street railways on or in the streets of the city of Detroit shall thereupon cease and become null and void.

SEC. 11. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continued to the said grantees, their associates, successors and as-

signs, for the period of thirty (30) years from and after the date of its adoption.

SEC. 12. Said grantees, their associates, successors and assigns, shall have power and are hereby authorized to organize themselves into a body politic and corporate under the laws of the State of Michigan, and all the powers and privileges hereby granted and conferred to and upon said grantees by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council.

SEC. 13. Cars going in the same direction shall not approach within forty feet of each other unless in case of accident or at terminals, or when run in trains or for the purpose of connecting the same together.

SEC. 14. The said grantees, their associates, successors and assigns, shall pay taxes on its real estate and on its personal property, including its rolling stock, tracks, wires, poles and motors, the same as an individual; provided, however, that in consideration of the reduced rates of fare fixed by this ordinance and other valuable considerations, the franchise herein granted and earnings of said railway shall in no manner be subject to taxation.

SEC. 15. Said grantees, their associates, successors and assigns, shall indemnify and save harmless the city of Detroit from
68 any and all claims for damages for which said city may be or become liable to pay by reason of the giving or granting of the authority or privileges hereby granted, or by reason of any disaster to life or limb or property by the running of cars by said grantees, their associates, successors and assigns; and shall execute a good and sufficient bond in the penal sum of one hundred thousand dollars, to be approved by the mayor, common council and controller of the city of Detroit, and deposited with said controller, conditioned to fully indemnify and save harmless the city of Detroit from any and all claims for damages, as in this section before stated; provided, that neither in the construction nor in the operation of their electrical equipment shall said grantees, their associates, successors or assigns, do any damage to sewers, conduits or cables, gas or water pipes; and the bond provided for in this section shall be held to cover all such damages; provided, that the liability shall not be occasioned by reason of the defective construction or condition of the street pavements, which it is the duty of said city of Detroit to construct and maintain in good condition, under the terms of this grant, or by virtue of its public duty as a municipality.

To absolve the grantees, their successors or assigns, from liability as provided in the latter clause, however, it shall be necessary for them to have given notice to the board of public works, at the office of said board, of such defects in the pavement between the hours of 8 a. m. and 4 p. m. on any day on which the office of said board is open for public business; and until such notice is given, as aforesaid, and for six hours thereafter, the responsibility for damage shall lie with the grantees, their successors or assigns, and be covered by the indemnity bond provided for in this section.

SEC. 16. Said grantees, their associates, successors and
69 assigns, shall issue and accept free transfer tickets to and from other street railways at the intersection of such lines, whenever such other street railway shall grant to the public and passengers like privileges; provided, that such transfer ticket shall be presented by the passenger receiving the same on one line on the next regular car of the other line passing the intersection of such lines.

SEC. 17. The right is hereby reserved to the common council of the city of Detroit to make by ordinance such reasonable rules as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation and running of cars for the public in relation to said railways; provided, further, that the cars on each and every route shall be not run further apart than ten minutes, excepting between the hours of 10 p. m. and 5 a. m.

SEC. 18. The city of Detroit hereby reserves the right to repeal, alter or amend this ordinance in case the said grantees, their associates, successors or assigns, shall violate any of its terms or conditions, provided that written notice of such violation shall be served on such grantees, their associates, successors or assigns, thirty days before such repeal, alteration or amendment, and that such violation shall continue during such thirty days; and, provided, also, that if there is a dispute as to such violation, the question shall be determined by the courts in any proper suit or other proceedings; and provided, further, that after such judicial determination, should it be against the grantees, said grantees shall have thirty days in which to comply with the terms of the ordinance as construed by the courts. Either party may enforce the terms of this agreement by suit or any judicial proceeding.

SEC. 19. The said grantees, their associates, successors and assigns, are also hereby authorized to construct, maintain and operate street railway lines on such other streets, avenues and public
70 places, and upon such other route or routes as the common council of the city of Detroit or other proper municipal authority may designate—said grantees having the first right to construct said additional lines or routes, provided they shall signify their acceptance of said route or routes in writing, filed with the city clerk of the city of Detroit, within thirty days after the same have been lawfully designated by the proper municipal authority and due notice thereof given to said grantees, their associates, successors or assigns. Such additional lines shall be constructed and operated under all the provisions and conditions of this ordinance; provided that nothing in this ordinance shall be construed to give the grantees, their associates, successors and assigns, any right or option to operate street railways on streets now occupied by or hereafter granted for lines of the Fort Wayne & Belle Isle Railway Company.

Whenever the common council shall decide that the establishment of a new route or the extension of any street railway line is necessary for public convenience and accommodation, it shall properly designate said route or extension and the terms and conditions

under which it shall be constructed and operated, and shall offer the same to the grantees of this ordinance, giving them thirty days in which to accept the same and file a bond in the sum of ten thousand dollars for the construction thereof, and if accepted within said period, said grantees shall have one year thereafter in which to construct and put into operation said new route or extension.

Provided, that the rate of fare upon any street railway line which may be extended in accordance with the foregoing provision shall not in any manner be increased for a single ride on or over the entire line, including such extensions.

If the grantee- hereof shall fail to accept the said line or
71 extension in the time provided above, the city may then grant the right to build and operate the same to any other party; provided, however, that the terms and conditions of the grant shall be the same as those previously offered to the grantees of this ordinance; and in making said grant to said new or other company after it has been refused by the grantees hereof, the city may provide that the tracks of the said new company may be extended to and connected with the tracks of the grantees hereof, at some point within one-half mile of the present Detroit city hall, and that the cars of the said new company may be operated on the tracks of said grantees, within said limit; and provided, further, that said new company shall pay to said grantees, their associates, successors or assigns, a reasonable compensation for a joint ownership of such tracks, poles, wires and appurtenances within said area, when declared necessary by the common council for the accommodation of the public, making said area free territory for existing routes or others that may be hereafter created. In case the value of said tracks and appurtenances cannot be agreed upon by the parties in interest, the same shall be submitted in arbitration for settlement, the grantees, their associates, successors and assigns to choose one arbitrator, the party desiring to acquire the rights to choose another arbitrator, and the two thus chosen to select a third arbitrator, who shall determine such value, such decision to be final and binding upon the parties. In the event of the arbitration being prolonged to the inconvenience of the public, the common council shall have the right to permit such new party to use the tracks and appurtenances in said area, upon the said new party's filing with the city controller a bond in such sum and with such sureties as shall be determined by the common council.

Sec. 20. Should any grant herein made be held by the
72 courts to be illegal, it is hereby expressly ordained that the rights of said grantees to construct, maintain and use and operate their lines or railway shall not thereby cease, but the same shall continue in full force and effect, subject to such limitations thereon with reference to such illegality as shall be lawful; and if any provisions of this contract, or any part thereof, be held invalid by the courts, such invalidity shall not affect the valid provisions of this agreement.

Sec. 21. Said grantees shall treat all passengers alike. Tickets

shall be sold at uniform prices. No passes or free tickets shall be given to any one, except employés of said grantees.

Any officer or employé of said grantees violating this provision shall be subject to prosecution in the recorder's court, and a fine for each offense, not to exceed fifty dollars, and upon the imposition of any such fine and costs the court may make a further sentence that, in default of payment thereof, such offender shall be imprisoned in the Detroit House of Correction for any length of time not exceeding thirty days.

SEC. 22. The city of Detroit shall have the right to purchase at the expiration of said period of thirty years, all tracks, cars, motors, wires, poles, electrical appliances and apparatus of said grantees, together with their power plant and other equipment necessary for the operation of its lines, at a price which shall be fixed by a board of arbitration to be constituted as hereinafter stated; provided said city shall give to said grantees, their associates, successors or assigns, written notice of its intention to make such purchase at least one year before the expiration of said thirty years, and shall proceed with and complete said arbitration. Said board of arbitration shall be appointed as follows: Three members by said grantees, their associates, successors and assigns, three members of the common council of the city of Detroit on the nomination of the mayor, and three members to be selected by the six members thus appointed. If the six members shall be unable to agree upon any one or more of the remaining three members of said board, then said remaining three members, or so many of them as shall not have been agreed upon, shall be appointed by the circuit court for the county of Wayne. In case either party shall neglect or refuse to appoint its own members for said board of arbitration such members of said board shall be appointed in its behalf by said circuit court for the county of Wayne. In arriving at a fair price at which said purchase shall be made by said city of Detroit such board of arbitration shall not take into consideration the value of this franchise or grant, but shall allow for the property to said grantees, their associates, successors or assigns its fair value for street railway purposes, taking into consideration cost and natural depreciation. The price, terms of the sale, and times of payment agreed upon by said board of arbitration, or a majority of the members thereof, shall constitute the basis of said sale, and both the city of Detroit and the grantees shall be bound to abide thereby. The property shall remain in possession of the grantees, their associates, successors, and assigns until the terms of purchase shall have been complied with by the city, and the grantees, their associates, successors, and assigns shall be responsible for the continuous operation thereof, under the terms of this grant, until said terms are complied with.

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SEC. 23. Said grantees, their associates, successors, and assigns, in consideration of this ordinance and the adoption thereof on or before the twenty-fourth day of December, 1894, agree to fully equip and put into complete operation the lines of railway hereinbefore specifically mentioned, during the year 1895.

74 And said grantees shall deposit with the city controller within thirty days after the adoption of this ordinance, as a guarantee for the construction of said railways a bank certificate of deposit in the sum of fifty thousand dollars, which shall be forfeited to the city in case said grantees shall fail to construct and put into operation the said railways within the period hereinbefore mentioned, upon the completion of said railways within said period said certificate shall be returned to said grantees.

SEC. 24. The said grantees shall file with the city clerk of the city of Detroit, within ten days from the date of the approval of this ordinance, their written acceptance of the provisions hereof, and shall, within thirty days thereafter, deposit with the city controller of the city of Detroit, an approved bond in the sum of one hundred thousand dollars as security for the completion by said grantees, their associates, successors or assigns, of the said street railway lines as herein described, and also for the fulfillment and execution of all of the terms and conditions of this ordinance; and in case of the default of said grantees, their associates, successors or assigns, said bond shall be forfeited to the city of Detroit in addition to the forfeiture of the franchise granted by this ordinance.

SEC. 25. This ordinance shall take immediate effect.

Approved December 4, 1894.

H. S. PINGREE, *Mayor.*

Attest: CHARLES R. FORSTER, *City Clerk.*

75 To the honorable the mayor and common council of the city of Detroit:

You are hereby respectfully notified that the undersigned has become the assignee of the railroads and property heretofore controlled by the Detroit city railway under and in accordance with the terms of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit," approved November 24, 1862, and of all the rights, privileges, and franchises granted by said ordinances, and all subsequent ordinances supplementary thereto and amendatory thereof, and that said Detroit Citizens' Street Railway Company hereby exercises the option given it by section two of said ordinance of November 24, 1862, to construct the new and additional street railway routes which are described in and formed, fixed, and determined by the terms of the ordinance which passed its third reading by the common council of the city of Detroit on Wednesday, the twenty-eighth day of November last, which said ordinance is entitled as follows, to wit: "An ordinance granting to Green Pack, Albert Pack, and Henry A. Everett, their successors and assigns when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain, and operate street railways on certain streets, avenues, and public places in the city of Detroit, and on such other streets, avenues, and public places as may be hereinafter designated,"

and stands ready to furnish all reasonable guaranty or security for the prompt construction of the routes specified in said last-mentioned ordinance.

And you are further notified that said Detroit Citizens' Street Railway Company will insist upon its rights to construct said new and additional routes under and in accordance with the
76 option given it by said ordinance of November 24, 1862.

DETROIT CITIZENS' STREET
RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*

Attest: J. R. STIRLING, *Secretary.*

Detroit, Dec. 4, 1894.

(Bill of complaint filed in Wayne circuit court December 14, 1894.)

77 *Subpœna.*

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

In the name of the People of the State of Michigan to the
[SEAL.] City of Detroit and the Detroit Railway:

You are hereby notified that a bill of complaint has been filed against you in the circuit court for the county of Wayne, in chancery, by The Detroit Citizens' Street Railway Company, as complainant, and that if you desire to defend the same you are required to have your appearance entered with the register of said court, at his office, in the city of Detroit, in said county, in person or by solicitor, within twenty days after the second day of January, in the year 1895, which is the return day of this writ. Hereof fail not under the penalty of having said bill taken as confessed against you.

Witness the Hon. Willard M. Lillibridge, circuit judge, at Detroit, this 14th day of December, in the year of our Lord one thousand eight hundred and ninety-four.

HENRY M. REYNOLDS, *Register,*
By CHAS. C. KELLOGG,
Deputy Register.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

STATE OF MICHIGAN, } ss:
County of Wayne, }

I hereby certify and return that on the 21st day of December, A. D. 1894, at Detroit, I served the within subpœna personally on the Detroit Railway Company by delivering to Green Pack, president of said company, the defendant named in said subpœna, by then and there, at the place and on the date above mentioned, delivering to said above-named defendant a true copy of the said

subpœna, inscribed "copy" and subscribed Brennan, Donnelly & Van De Mark, complainant's solicitors, and by showing at
78 the same time to the said above-named defendant the said subpœna, with the seal of the court impressed thereon; on which copy so served was a true copy of the underwriting on the said subpœna.

CHARLES P. COLLINS, *Sheriff*,
By HARRY M. WILLIAMS,
Deputy Sheriff.

Dated Dec. 21, A. D. 1894.
My fees, $1.00.

STATE OF MICHIGAN, } ss:
County of Wayne, }

I hereby certify and return that on the 14th day of December, A. D. 1894, at the city of Detroit, I served the within subpœna personally on the City of Detroit by delivering to Hazen S. Pingree, mayor of said City of Detroit, defendant named in said subpœna, by then and there, at the place and on the date above mentioned, delivering to said above-named defendant a true copy of the said subpœna, inscribed "copy" and subscribed Brennan, Donnelly & Van De Mark, complainant's solicitors, and by showing at the same time to the said above-named defendant the said subpœna, with the seal of the court impressed thereon; on which copy so served was a true copy of the underwriting on the said subpœna.

CHARLES P. COLLINS, *Sheriff*,
By PETER J. CANTO, *Deputy Sheriff.*

Dated Dec. 22, A. D. 1894.
My fees, $1.00.

79 Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY }
vs.
THE CITY OF DETROIT *et al.* }

SIR: Please enter the appearance of the defendant The City of Detroit, by me as its solicitor, together with the usual order requiring complainant to serve a copy of the bill of complaint, etc.

JOHN J. SPEED,
Defendant's Solicitor.

To the register of said court.

SIR: Please take notice that I have this day caused the appearance of the defendant The City of Detroit to be entered in said cause, together with a rule requiring service of a copy of the bill of complaint within the usual time.

JOHN J. SPEED,
Defendant's Solicitor.

To Brennan, Donnelly & Van De Mark, attorney- for compl't.

Filed Dec. 27, 1894.

80 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

The Answer of the Defendant The Detroit Railway to the Bill of Complaint of the Complainant.

This defendant, now and at all times hereafter saving and reserving to itself all manner of exception to and benefit of the numerous errors in the complainant's bill of complaint, for answer thereto, or to such parts thereof as it is advised it is necessary to make answer, says:

1. It admits the allegations of the first paragraph of the bill, with reference to the organization of the Detroit city railway on the 9th of May, 1863, under the act of February 13, 1855. It admits the purpose of the organization of said company, as alleged in said paragraph, to wit, the acceptance of the ordinance of November 24, 1862.

81 It admits that the said corporation constructed and operated street railways upon some of the streets specifically named in said ordinance of November 24, 1862, but denies that it constructed and operated street railways upon all the streets so named. As to the purchase of railway lines by the complainant, this defendant neither admits nor denies, but leaves complainant to proof thereof.

2. It admits the organization of the complainant as set forth in the second paragraph of the bill. As to the purchase and operation by the complainant of the lines and property of the Detroit city railway, it is not advised, and leaves the complainant to proof thereof; but it expressly denies that the complainant and its predecessors have always faithfully fulfilled and performed all the terms and conditions imposed upon the said Detroit city railway by the ordinance of November 24th, 1862, and the ordinance amendatory thereof and supplementary thereto.

3. It admits that section two of the ordinance of November 24, 1862, as amended January 12, 1863, is correctly set forth in the third paragraph of the bill. It denies that said section two, as therein set forth, is in full force and effect or that the grantees in said ordinance were exclusively authorized to construct and operate railways as therein provided, and denies that by the terms thereof said grantees were authorized to construct railways through any streets not specifically named in said ordinance, or that any right or easement was granted in streets not then specifically named.

This defendant further answering shows:

(*a*) The common council of the city of Detroit, at the time of the passage of said ordinance, had no power to grant exclusive fran-

chises to operate street railways in all the streets of said city,
82 and if the language of said section two can be construed as granting an exclusive franchise it is *ultra vires* and void.

(*b*) By a reasonable interpretation of the language of said section, the grantees named in said ordinance were only authorized to construct railways through such streets and avenues as were specifically named therein, or through such other streets and avenues as the common council might thereafter specifically fix and determine and expressly confirm to said grantees.

(*c*) By the reasonable interpretation of the language of said section two, succeeding common councils of the city of Detroit were not thereby prohibited from granting to other corporations the right to construct and operate street railways upon other streets and avenues in said city.

4. It admits that the provisions of section 2, so far as they relate to the construction of railways upon the streets specifically named in said section, were agreed upon for the mutual benefit and protection of the people of the city of Detroit and the Detroit city railway, and were intended to be carried out in good faith by both the parties, but it shows that the said company, in violation of its contract with the city, neglected and refused to construct railways upon many of the streets named in said ordinance, and this defendant avers:

(*a*) The policy of said company, from the time of its organization, was to abandon such streets as it did not believe could be operated upon with profit to itself, and to accept under the ordinance only such streets upon which it deemed it would be advantageous to construct and maintain street railway lines.

(*b*) In pursuance of this policy, after accepting the ordinance, the following streets named therein, were abandoned by said company without the consent or authority of the city of Detroit, to
83 wit: Witherell, Grand River, Brush, Beaubien, Third and Fort streets to the western limits of the city.

(*c*) The said Detroit city railway recognized the forfeiture of its rights by an application to the common council in 1864 asking for an extension of time within which to construct a railway on Fort street to the westerly city limits, and thereupon the council passed an ordinance granting an extension of time for the construction of said line by said company, which ordinance was vetoed by the Honorable K. C. Barker, then mayor of Detroit. In the message vetoing the same the following language appears:

"The privilege of constructing a railway in that street is doubtless valuable, and there can be no difficulty in procuring it to be done at any time, but the power and the right to construct it ought not to be continued in any one company for one, two or three years, to the exclusion of all others, when that company is either unwilling or unable to build it, and thus standing in the way of all progress and improvement upon the street in the meantime. Against such a grant of power, as is well known, the citizens upon that street have remonstrated almost unanimously, and when the inconveniences and detriment to the public interests are so great,

by its continuance as is authorized by this ordinance, I cannot but feel it is a clear duty to withhold my approval."

The veto of the mayor was sustained by the common council and the forfeiture of the rights of said company in consequence of the violation of its contract, confirmed.

(*d*) By reason of the violation of the contract of the Detroit city railway in its failure to construct and operate the lines specifically named in the ordinance of 1862, it became necessary for the city of Detroit, in order to accommodate the public, to enter into contract relations with other companies, for the purpose of obtaining
84 the construction and operation of the street railways hereinafter named.

On the 22nd of November, 1864, shortly after the declaration of the common council forfeiting the rights of the said the Detroit city railway, Frederick Buhl, Peter Henkel and others, petitioned the common council of the city of Detroit for the right to construct and operate a street railway on Fort street from the westerly city limits to Woodward avenue, and thence easterly on Michigan, Randolph and Croghan streets to Elmwood avenue, and action was thereupon taken and a franchise duly granted to the Fort Street and Elmwood railway to construct and operate a street railway upon the lines above named, covering not only Fort street, which was specifically named in the ordinance of November, 1862, but other streets and avenues not therein mentioned. To the granting of this franchise no protest or remonstrance was made by the Detroit city railway, and no legal proceedings were taken by it to enjoin the construction thereof.

(*e*) On April 21st, 1868, a petition of citizens for permission to construct and operate a street railway up Woodward avenue and through Grand River street was presented to the common council, and proceedings thereon were taken which resulted in the passage of an ordinance granting to the Grand River Street Railway Company a franchise to construct and operate its road upon Woodward and Grand River avenues, which ordinance was approved by the mayor on the first of May, 1868.

(*f*) On the thirteenth of June, 1873, a franchise was granted to the Detroit and Grand Trunk Junction street railway, authorizing the construction and operation of a street railway from Mt. Elliott avenue through Congress, Larned and Randolph streets and Jos. Campau avenue and Seventh, Baker and Twenty-fourth
85 streets and Dix road to the westerly limits of the city, which railway was duly constructed and put into operation.

(*g*) On the sixteenth of June, 1875, the common council granted to the Central Market, Cass Avenue and Third Street railway the right to construct and operate a street railway from Jefferson avenue, through Bates, Farmer, Gratiot, State and Cass streets, Cass avenue, Ledyard and Third streets to the Holden road and also through Third street south from Ledyard street to Woodbridge street, also through Larned street from Third street to Bates street and through Griswold street from Larned to State street, which

street railway was substantially constructed and put into operation during the year 1876.

(*h*) The common council also granted to the Russell Street, St. Aubin Avenue and Detroit & Milwaukee Street Railway Company, a franchise for the construction and operation of a street railway from Gratiot avenue north through Russell street to Ferry street, thence through Ferry street to St. Aubin avenue, and thence to the northerly limits of the city, which street railway was substantially constructed and put into operation during the year 1874.

Neither at the time the respective franchises above mentioned were under consideration by the common council, nor at the time the same were granted, did the Detroit city railway enter any protest or remonstrance against the adoption of the said several ordinances, nor did it make any claim to any of the streets over which the said several lines were to be operated, nor did it commence any legal proceedings to restrain the building and operating of said several lines. Neither did the city of Detroit, before the passage of either of the said several ordinances, take any action to fix or designate said streets as street railway lines for the Detroit city railway or offer the streets embraced within said ordinances
86 to the Detroit City Railway Company for the construction and operation of its street railway lines upon.

(*i*) In further pursuance of the said policy of the Detroit city railway, referred to in section (*a*) of paragraph four of this answer, the said company, after the various lines hereinbefore mentioned had become established, and after they were upon a substantial financial basis, and recognizing the right of the city of Detroit to grant the several franchises hereinbefore named, acquired by purchase all of said lines, except the line of the Fort Street and Elmwood Railway Company, and the complainant, as assignee of the Detroit city railway, is at present operating the same, and claims the right thereto by virtue of the original grants specifically mentioned herein.

(*j*) On the second day of October, 1888, upon the recommendation of the mayor, the common council appointed a committee to lay out such street railway routes as were deemed necessary to fully accommodate the public, and to advertise for proposals to equip and operate such routes, all bids to be made upon the basis of the lowest rate of fares. Upon the report of said committee, action was taken by the common council and an ordinance was adopted, and proposals by other parties (said Detroit city railway wholly neglecting to make any bid) were received and submitted to the council on the 4th of December, 1888. Said ordinance was finally defeated through the veto of the mayor, and thereupon the Detroit city railway, upon its petition to the common council, secured an ordinance granting to it permission to construct and operate new railway lines in the city of Detroit, embracing substantially the lines covered by the plans approved by the council aforesaid. And contemporaneously with the petition of the Detroit city railway and the granting of this ordinance, the common council adopted, upon like petition

an ordinance granting to the Grand River street railway and
87 to the Fort Wayne & Elmwood Railway Company the right to construct new street railway lines in the city of Detroit. To the action of the common council in granting such franchises to the Fort Wayne & Elmwood Railway Company and the Grand River Street Railway Company no protest was made by the Detroit city railway, nor were any legal proceedings taken by it to prohibit the construction of said new lines.

And this defendant, further answering the allegations contained in the fourth paragraph of the bill, denies that in the original grant to the Detroit city railway it was contemplated that all street railways in the city of Detroit should be controlled and operated by one company because of the plan of the city's highways, and it denies that said city varies in any particular from other large cities having a central location of its business interests.

5. In answer to the fifth paragraph of the bill, this defendant admits the various proceedings commenced in the Federal court as set forth in said paragraph, but claims in reference thereto that the pleadings in said cause did not present, in any form or manner, any question involving the right which the complainant sets up in this suit, and that the only question involved in said cause was in relation to the validity of the ordinance of November 14th, 1879, extending the right of the Detroit city railway to maintain its railways in the streets actually occupied by it, and denies that any questions pertaining to the complainant's exclusive right to the streets of Detroit, was involved.

6. Answering the sixth paragraph of the bill, this defendant admits that at the time the ordinance of 1862 was passed the population of Detroit was about fifty thousand and there were no street railways in the city, and it avers that the area of the city of Detroit was very limited, and the grant thereby made, was confined
88 to the lines of the city as then established and submits herewith a map of the city showing the limits thereof as then existing, which is annexed hereto and made a part of this answer as Exhibit "A."

This defendant further denies that the Detroit city railway, in pursuance of the provisions of section two, has built and constructed a large number of street railways in streets fixed and determined by subsequent votes of the common council, but charges the truth to be that the greater portion of said street railways have been built and operated by other companies, as specifically set forth in paragraph four of this answer.

It further denies that any extensions of old routes or the construction of new routes were accepted by the company and constructed and operated by complainant and its assignors and put into operation before they would pay operating expenses, but avers that in order to secure to the people of Detroit the benefits and advantages of street railways the city was compelled to grant as hereinbefore mentioned, the right to construct street railways in many of the streets of the city to other companies.

7. It admits that on the 4th of December, 1894, the common

council of the city of Detroit, upon petition of Albert Pack, Greene Pack and Henry A. Everett, granted a franchise for the construction of street railways, as set forth in paragraph seven of the bill, but denies that any one of the lines embraced within said ordinance in any manner infringes upon the rights of the complainant, or will, when constructed and operated, become in any manner a competing line to any of the lines operated by said complainant. The only street covered by said ordinance upon which complainant now maintains a street railway, is Jefferson avenue, for a distance of about two blocks, and the track of defendant's company is to be placed upon said avenue for the purpose of procuring com-
89 munication with Belle Isle park, for the accommodation of the public residing along the lines of the defendant's railway, and the occupation of Jefferson avenue by defendant's line is not for the purpose of deriving a business from Jefferson avenue, and the operation of defendant's line on Jefferson avenue will in no way lessen the traffic or damage the business of complainant railway line on said avenue. Defendant further avers that the portions of Jefferson avenue referred to in this paragraph was not embraced in the original grant to the Detroit city railway under the ordinance of November 24, 1862.

This defendant submits herewith a map of the city showing the street railway lines that are operated by complainant and the proposed lines which are to be constructed under the ordinance granted to defendant, which is hereto annexed and made a part of this answer, as Exhibit "B."

8. This defendant admits the allegations contained in the eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth paragraphs of the bill.

9. In answer to the fifteenth paragraph of the bill, this defendant denies that the street railway lines and routes embraced within the ordinance granted to the defendants in any manner parallel, injure or divert traffic from any of the lines operated by the complainant, or that the grant of said ordinance was for the purpose of oppressing or harassing complainant in any manner, or for the purpose of forcing complainant to relinquish any of its existing rights or contracts, or for the purpose of depriving it of any of the benefits that might be secured by said complainant; but avers that said lines were located by the common council of the city of Detroit for the express purpose of meeting the urgent demands of the people for street railway facilities along the lines embraced within said ordinance.

90 10. It denies that complainant, as alleged in paragraph sixteen of the bill, under its existing contract, has been ready and willing to construct and operate any of the street-car lines specified in the ordinance of December 4, 1894, or that the construction thereof by this defendant will result in injury or loss to the complainant; but this defendant avers that for a long time prior to the adoption of said ordinance of December 4, 1894, the people of the city of Detroit, by petition and otherwise, have repeatedly urged said complainant to construct and operate street-car lines

upon many of the streets mentioned in said grant, notably Fourteenth and Warren avenues, which complainant has wantonly neglected and refused to do. It denies that complainant has ever offered, or that it does offer, to construct and operate lines upon the streets in question, upon the same terms or upon terms that are as beneficial to the public as those accepted by the defendant under its ordinance. And this defendant further avers that complainant has publicly and by communications to the common council, repeatedly refused to construct lines upon the streets embraced within said ordinance granted to this defendant, upon the terms and conditions therein imposed, and has repeatedly declared that such lines could not be operated upon such terms and conditions, without great financial loss, and that the construction thereof would be of no benefit nor advantage to the traveling public.

11. It admits the allegations contained in the seventeenth paragraph of the bill.

12. It denies, as alleged in the eighteenth paragraph of the bill, that by the terms of the ordinance of November 24, 1862, a contract was made, embracing the rights and privileges claimed by complainant. It denies that the granting of the ordinance of December 4, 1894, to the Detroit railway impairs the obliga-
91 tions of the contracts of the complainant, and denies that complainant is entitled to the protection of the provisions of the fourteenth amendment of the Constitution of the United States, as set forth in paragraph eighteen of the bill.

And this defendant asks that affirmative relief be granted to it in the premises, to the end that an adjudication of its rights under the ordinance of December 4, 1894, may be had, and prays the court that it be decreed in this cause that said ordinance is valid and the defendant is entitled to operate street railways upon the streets named therein in accordance with the terms of said ordinance.

All which matters and things this defendant is ready to aver, maintain and prove as the court shall direct, and prays to be hence dismissed, with its reasonable costs and charges most wrongfully sustained.

THE DETROIT RAILWAY,
By GREENE PACK, *President.*

JOHN B. CORLISS AND
CHARLES FLOWERS,
Solicitors for the Detroit Railway.
BENTON HANCHETT, *Of Counsel.*

STATE OF MICHIGAN, } ss :
County of Wayne, }

On this third day of January, 1895, before me the undersigned, a notary public in and for said county, personally appeared Greene Pack, who, being by me first duly sworn, made oath and said that he is president of The Detroit Railway, a corporation, defendant; that he had read the foregoing answer by him subscribed in behalf

of the Detroit railway as its president, and knew the contents
92 thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief of said defendant, and as to those matters he believed it to be true.

ARTHUR WEBSTER,
Notary Public, Wayne County, Michigan.

(Answer filed January 7, 1895.)

93 The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET R'Y CO.
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY.

The Replication of The Detroit Citizens' Street Railway Company, Complainant, to the Answer of The Detroit Railway, Defendant.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say that it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant, The Detroit Railway, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said bill it has already prayed.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Filed Jan. 15, 1895.

94 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

First Amendment of Bill.

And now comes the said complainant and by leave of the court files the following amendment of its bill of complaint in this cause, the same to be annexed to and inserted in said bill as paragraph 15½.

15½. Your orator further shows that said defendants claim
95 and assert that said ordinance of November 24th, 1862, is invalid and of no effect in so far as it purports to grant to said Detroit city railway, its successors or assigns, an exclusive right to construct street railroads along and upon the streets therein named, and that hence said ordinance of December 4th, 1894, in no manner violates any rights of your orator as the successor of said Detroit city railway; but your orator is advised and submits that even if said ordinance of November 24th, 1862, should be held so invalid (the contrary of which your orator is advised and submits), it is nevertheless valid and effective to invest in your orator as the successor of the said Detroit city railway, the right to construct, maintain and operate street railroads in said streets in said ordinance of December 4th, 1894, named and to locate said tracks in said streets as the same are required by said ordinance of November 24th, 1862, to be located, to wit: if a single track then in the center of said streets, and if a double track then leaving a space in the center of said streets sufficient for the passing of cars, and that any grant subsequently made or attempted to be made by said city which conflicts with said right so vested in your orator is invalid.

And your orator further shows that the streets named in said ordinance of December 4th, 1894, are too narrow to permit the construction of the roads authorized to be constructed therein by the said ordinance of November 24th, 1862, and the roads authorized to be constructed therein by the said ordinance of December 4th, 1894, and that said last-mentioned ordinance locates the tracks proposed to be constructed thereunder in the same portions of said streets as the said ordinance of November 24th, 1862, locates the tracks to be constructed thereunder, and the construction of the tracks authorized by said ordinance of December 4th, 1894,
96 will exclude your orator from exercising its rights to construct roads in said streets. Wherefore your orator is advised and submits that even if said ordinance of November 24th, 1862, should be held not to grant to your orator an exclusive right in said streets, your orator is nevertheless entitled to the relief herein prayed.

The said complainant has caused its vice-president to sign and verify this amendment.

THE DETROIT CITIZENS' STREET
RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*

BRENNAN, DONNELLY & VAN DEMARK,
Solicitors for Complainant.

FRED. A. BAKER,
ASHLEY POND, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this the 14th day of January, 1895, before me, a notary public in and for said county, personally appeared J. C. Hutchins and

made oath that he had heard read the above and foregoing amendment of bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge except the matters and things therein stated to be on information and belief, and as to those matters he believes the same to be true.

EDWARD A. STRICKER,
Notary Public, Wayne County, Michigan.

Filed Jan. 14, 1895.

97 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

Demurrer of the City of Detroit.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true, in such manner and form as the same are therein set forth and alleged, demurs to said bill, and for cause of demurrer shows that the said complainant hath not, in, and by said bill made or stated such a cause as doth or ought to entitle *them* to any such relief as is thereby sought and prayed for, from or against this defendant.

Wherefore this defendant demands the judgment of this honorable court whether it shall be compelled to make any further or other answer to the said bill of any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

JOHN J. SPEED,
Solicitor for Defendant The City of Detroit.

Filed Jan. 15, 1895.

98 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

Answer of Detroit Railway to Amendment of Bill.

The defendant, The Detroit Railway, now and at all times saving and reserving to itself all manner of exception to and benefit of the numerous errors in complainant's amended bill of complaint, for answer thereto, or to such parts thereof as it is advised it is necessary to make answer, says:

1. This defendant denies that the ordinance of November
99 24th, 1862, was valid or was of the effect to vest or did vest in the complainant, as successor of the Detroit city railway,

the right to construct, maintain and operate street railroads in the streets named in the ordinance granted to this defendant and approved December 4th, 1894; and denies that said ordinance of November 24th, 1862, authorized complainant, as successor of the Detroit city railway, to lay its tracks in the streets mentioned in the ordinance of December 4th, 1894, in the center of the street, if single track, or if a double track, leaving a space in the center of the street for passing cars.

2. This defendant denies that the grant subsequently made by the city of Detroit to this defendant conflicts with any vested rights in said complainant, and further denies that the ordinance of December 4th, 1894, is invalid.

3. This defendant further answering, denies that the ordinance of December 4th, 1894, and the construction of the defendant's road under said ordinance, does or would exclude the complainant from constructing a street railroad in the streets mentioned in said ordinance, if permission or authority should at any time be given to said complainant to construct its roads in said streets; and this defendant also denies that the streets mentioned in the ordinance of December 4th, 1894, are too narrow to permit the construction of the roads of both companies, should the city authorities see fit to authorize such construction.

4. This defendant further denies that complainant is entitled to the relief sought in its amended bill of complaint filed in said cause, or any part thereof, and prays the court that it be decreed in this cause that said ordinance of December 4th, 1894, be declared valid, and this defendant entitled to operate street railways upon the streets named therein, in accordance with the terms of the said ordinance.

All of which matters and things this defendant is ready
100 to aver, maintain and prove as the court shall direct, and prays to be hence dismissed with its reasonable costs and charges most wrongfully sustained.

(Signed) THE DETROIT RAILWAY,
By H. A. EVERETT, *Vice-President.*

JOHN B. CORLISS,
CHARLES FLOWERS,
Solicitors for Defendant.
BENTON HANCHETT, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 24th day of January, 1895, before me, the undersigned, a notary public in and for said county, personally appeared H. A. Everett, who being by me first duly sworn, made oath and said that he is vice-president of The Detroit Railway, a corporation, defendant; that he had heard read the foregoing answer to complainant's amended bill of complaint by him subscribed in behalf of the defendant, and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be

on information and belief, and as to those matters he believed it to be true.

ARTHUR WEBSTER,
Notary Public, Wayne County, Michigan.

Filed Jan. 24, 1895.

101 The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT, a Municipal Corporation, and THE DETROIT RAILWAY, a Corporation, Defendants.

The Replication of the Detroit Citizens' Street Railway Company, Complainant, to the Amended Answer of The Detroit Railway, Defendant.

This repliant, saving and reserving to itself now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficienc-es of the said amended answer, for replication thereunto says that it will aver, maintain, and prove its bill of complainant to be true, certain, and sufficient in the law to be answered unto, and that the said amended answer of the Detroit railway is uncertain, untrue, and insufficient to be replied to by this repliant; without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by its said bill it has already prayed.

BRENNAN, DONNELLY & VAN DE MARK,
FRED. A. BAKER AND ASHLEY POND,
Solicitors for Complainant.

Filed Feb. 2, 1895.

102 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY, Impleaded with THE CITY OF DETROIT, Defendants.

This cause being at issue as to the defendant The Detroit Railway by filing replication to the amended answer of said The Detroit Railway, said defendant, The City of Detroit, having demurred to the bill of complaint filed in said cause, and more than ten days having elapsed since the filing of said replication, and no notice of an application for taking the examination of witnesses in open court having been given by either party, on motion of Brennan, Donnelly

& Van De Mark, solicitors for complainant in the above-entitled cause, ordered that the parties therein produce their witnesses and take their testimony in said cause within sixty days after notice of this order.

February 15, 1895.

BRENNAN, DONNELLY & VAN DE MARK,
Compl't's Sol'rs.

103 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY, Impleaded with THE CITY OF DETROIT, Defendants.

This cause being at issue as to the defendant The Detroit Railway by filing replication to the amended answer of said The Detroit Railway, said defendant, The City of Detroit, having demurred to the bill of complaint filed in said cause, and more than ten days having elapsed since the filing of said replication, and no notice of an application for taking the examination of witnesses in open court having been given by either party, on motion of Brennan, Donnelly & Van De Mark, solicitors for complainant in the above-entitled cause, ordered that the parties therein prod-ce their witnesses and take their testimony in said cause within sixty days after notice of this order.

BRENNAN, DONNELLY & VAN DE MARK,
Compl't's Sol'rs.

February 15, 1895.

104 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY
vs.
THE DETROIT RAILWAY, Impleaded with THE CITY OF DETROIT, Defendants.

To Messrs. Charles Flowers and John B. Corliss, Esqrs., solicitors for defendant The Detroit Railway:

SIRS: You will please to take notice that the foregoing is a true copy of an order to produce proofs this day entered in the above-entitled cause.

Dated Feb. 15, 1895.

Yours, &c.,

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Compl't.

STATE OF MICHIGAN, } ss:
County of Wayne, }

Alexander Munro, being duly sworn, deposes and says that on the 15th day of February, A. D. 1895, he served a true copy of the foregoing order and notice on Charles Flowers, one of the solicitors for the defendant The Detroit Railway, by handing the same to Edward McNamara, a person whom he found in charge of the office of said Flowers, said Flowers being at the time absent from his office.

ALEXANDER MUNRO.

Subscribed and sworn to before me this 15th day of February, A. D. 1895.

G. RAYMUND EMPSON,
Notary Public, Wayne County, Michigan.

105 STATE OF MICHIGAN:

Wayne Circuit. In Chancery.

DETROIT CITIZENS' STREET RAILWAY COMPANY, Compl't,
vs.
DETROIT RAILWAY and CITY OF DETROIT, Defendants.

It is hereby stipulated that the time to take testimony before the commissioner in this cause be extended until the first day of October, 1895, and that either party can take testimony up to that date.

Detroit, May 11, 1895.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.
JOHN B. CORLISS & CHAS. FLOWERS,
Sol'rs for The Det. R'y, Def'ts.

Filed May 19, 1895.

106 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET R'Y CO., Complainants,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

It is hereby stipulated by and between the respective parties in the above-entitled cause that the time within which said defendant, The Detroit Railway, shall complete its proofs by the examination of witnesses before a commissioner, as heretofore stipulated, shall be and is hereby extended to the 30th day of October, A. D. 1895, and any rebutting proofs of complainant to be made thereafter.

JOHN B. CORLISS & CHAS. FLOWERS,
Solicitors for Railway.
BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Filed Sept. 23, 1895.

107 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

You will please take notice that on Monday, the 9th day of December, 1895, before the chancery judge, at the opening of court on said day or as soon thereafter as counsel can be heard, the said complainant will move said court for an order granting said complainant leave to file in said cause amendments to the bill of complaint filed in said cause, a true copy of which amendments is herewith served.

This motion is based on the files in said cause and the said amendments herewith served.

Yours, &c.,

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Dated Dec. 3rd, 1895.

To Charles Flowers and John B. Corliss, solicitors for the Detroit railway.

108 THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

DECEMBER 16TH, 1895.

On motion of Fred. A. Baker, counsel for complainant, and no opposition thereto being made by the counsel for the defendants, leave is hereby granted to the complainant to file its proposed amendments to its bill of complaint in response to the supplemental matter brought into the case by the amendments to the answer of the defendant The Detroit Railway.

WILLARD M. LILLIBRIDGE,
Circuit Judge.

109 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

Second Amendment of Bill.

And now comes the said complainant and by leave of the court, files the following amendments to its bill of complaint in this cause,

for the purposes of meeting the defenses set up in the supplemental answer of the defendant The Detroit Railway, the said amendments of the bill to stand as paragraphs 19, 20, 21, and 22 of the bill, as follows:

19. Your orator shows that it filed its bill in this cause on the 14th day of December, 1894, and that it immediately gave notice to the defendants of an application for an injunction pending the suit; that said application was heard by the court on the 7th
110 day of January, 1895, and it was resisted by the said Detroit railway; that on the 14th day of January, 1895, the application was denied, and your orator became and was powerless to prevent the Detroit railway, if it saw fit to run the risk, from going on with the construction of its proposed street railways pending this suit and before its final determination, but this defendant shows that if it should be adjudicated and determined by the court on the final hearing of this cause, that your orator is not entitled to the relief prayed, except on paying the Detroit railway the reasonable cost and expense of the construction of its said railways, then your orator offers to pay such cost and expense, and to comply with such other equitable terms and conditions as may be imposed upon it by the court.

20. Your orator shows that since the bill in this cause was filed and during the year 1895, the city of Detroit has made a number of supplemental grants to the Detroit railway, but said supplemental grants are equally in violation of the rights of your orator as the original grant of December 4, 1894, and your orator is entitled to the same relief as to both; that two of said supplemental grants, viz: that of August 13, 1895, and October 8, 1895, also conferred certain rights and privileges on your orator, to be exercised jointly with the Detroit railway under contracts between the two companies referred to in said grants, but your orator shows that it was expressly understood and agreed between the parties that said contracts should not prejudice the rights of either in this suit and litigation.

21. Your orator shows that since the bill in this cause was filed the Detroit railway, against the protests and objections of your orator, has proceeded to construct its said proposed railway lines, which cross or for short distances intersect the lines of your orator at a number of points or places and that rather than enter
111 into litigation with the Detroit railway as to each one of said crossings or intersections, your orator entered into contracts with the Detroit railway adjusting said matters, but with the distinct understanding and agreement that the rights of either party in this suit and litigation were not to be prejudiced thereby.

22. Your orator respectfully submits and shows that it has not since or before this bill was filed done any act or thing whatever to recognize the alleged rights of the Detroit railway to construct street railways in Detroit, or which would estop your orator from insisting upon its rights under the ordinance of November 24, 1862, as re-

newed and extended by the ordinance of November 24, 1879, and the subsequent ordinances.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
By JERE. C. HUTCHINS, *Vice-President.*

BRENNAN, DONNELLY & VAN DEMARK,
Solicitors for Complainant.

ASHLEY POND,
FRED. A. BAKER, *Of Counsel.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this third day of December, 1895, before me, a notary public in and for said county, personally appeared Jere C. Hutchins and made oath that he had heard read the above and foregoing amendments of bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except the matters and things therein stated to be on information and belief, and as to those matters he believes the same to be true.

EDWARD A. STRICKER,
Notary Public, Wayne County, Michigan.

Filed Dec. 16, 1895.

112 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

And now comes the said defendant, The Detroit Railway, by its solicitors, John B. Corliss and Charles Flowers, and moves the court for an order granting to defendant leave to file in said cause a supplemental answer, embracing new facts that have occurred since the filing of the original answer in said cause, the facts embraced in the supplemental answer being deemed necessary and justifiable. This motion is based upon the annexed affidavit and supplemental answer attached hereto.

JOHN B. CORLISS AND
CHARLES FLOWERS,
Solicitors for Defendant The Detroit Railway.

To Brennan, Donnelly & Van De Mark, solicitors for complainant:

Take notice that the foregoing motion has this day been filed in said cause; that the same will be brought up for hearing on No-

vember 18, 1895, before the chancery judge at the opening of court on said day or as soon thereafter as counsel can be heard.

JOHN B. CORLISS AND
CHARLES FLOWERS,
Solicitors for Defendant The Detroit Railway.

Dated November 13, 1895.

113 STATE OF MICHIGAN, } ss:
County of Wayne, }

In the Circuit Court for the County of Wayne. In Chancery.

John B. Corliss, being duly sworn, says that he is one of the solicitors for defendant The Detroit Railway in the above-entitled cause; that at the time of making the original answer in said cause the defendant The Detroit Railway had not put into operation its system of street railways in the city of Detroit; that it appears from the testimony taken in said case that about forty miles of track have been fully construc-ed and put into operation, with upwards of sixty cars, at an expense of upwards of a million and a half of money, and that numerous contracts have been executed by and between the complainant and this defendant which were deemed as important and introduced as evidence in said cause, and that, in order to do full justice to said defendant in said cause, the facts as they appear from the testimony should be embraced in defendant's answer.

JOHN B. CORLISS.

Subscribed and sworn to before me this 12th day of November, A. D. 1895.

ARTHUR WEBSTER,
Notary Public, Wayne County, Michigan.

114 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant, }
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants. }

Supplemental Answer of Detroit Railway.

And now comes the said defendant, The Detroit Railway, and by leave of the court, files the following supplemental answer to the bill of complaint in this cause:

1. That the defendant, The Detroit Railway, has proceeded in the construction of its street railroad in the city of Detroit,
115 and has constructed, equipped and put in operation forty miles of said road in said city, and has in process of con-

struction seven additional miles, and has expended therefor over the sum of one million five hundred thousand ($1,500,000) dollars, and has incurred additional liabilities therefor to the amount of one hundred and fifty thousand ($150,000) dollars; that it is now operating such road and carrying thereon an average of twenty thousand passengers daily.

2. That the city of Detroit, through its mayor and common council, during the present year of 1895, has granted to this defendant additional street railway lines upon a number of streets not embraced in the original ordinance, approved December 4th, 1894; that such additional lines were granted by supplemental ordinances for the purpose of extending and completing a perfect system of street railway lines in the city of Detroit, and were duly approved and accepted by this defendant; that under said ordinances, one approved August 13th, 1895, another approved October 8th, 1895, joint rights and privileges were granted to complainant and this defendant; that by the provisions of said ordinances they were not to become operative until accepted by both complainant and this defendant; that within the time mentioned in said ordinances, said complainant and this defendant respectively accepted in writing said grants by the city of Detroit, which thereby became binding and operative on said parties; and that by virtue of said grants, said complainant and this defendant have constructed and put into operation and are now jointly operating the lines described in said ordinances.

3. To enable this defendant to carry on such construction and complete the system of its street railway, the complainant has entered into agreements with this defendant, by which this
116 defendant was enabled and permitted to make and use crossings of the complainant's street railroad at many different streets and street crossings in said city, and other agreements by which provision is made for an exchange of the respective electric currents of the two parties, the complainant and this defendant, so that each may use for the propelling of its street cars the electric current of the other, and other agreements by which a joint use of the same tracks and portions of street railroads are made by the complainant and this defendant in operating their respective roads, and for the making of such agreements, this defendant has paid to said complainant large sums of money. The complainant and this defendant are now acting under said agreements and operating their respective roads thereunder, and this defendant is operating its road under such agreements.

4. This defendant submits and avers that by reason of the premises, complainant has recognized the rights of this defendant to construct and operate its railway tracks upon the several streets mentioned in the ordinances referred to in the original answer, as well as the ordinances subsequently granted and herein described, and by reason thereof and the premises, complainant is now estopped

from disputing the rights of this defendant under and by virtue of said ordinances.

JNO. B. CORLISS AND
CHAS. FLOWERS,
Solicitors for Defendant The Detroit Railway.

THE DETROIT RAILWAY,
By FORD STARRING,
[SEAL.] *Assistant Secretary.*

Filed Nov. 14, 1895.

117 In the Circuit Court for the County of Wayne. In Chancery.

At a session of the said court held at the court-room, in Detroit, on Monday, the 18th day of November, 1895.

Present: Honorable W. M. Lillibridge, circuit judge.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

In this cause, on motion of John B. Corliss and Charles Flowers, solicitors for the defendant The Detroit Railway, and Fred. A. Baker, of counsel for the complainant, consenting thereto in open court, it is ordered that the motion for leave to file the supplemental answer of the Detroit railway in said cause be granted and the supplemental answer on file in said cause be entered as a supplement to its original answer in said cause.

Upon like motion and consent it is further ordered that the time within which to complete the proofs in said cause be extended ten days from this date.

WILLARD M. LILLIBRIDGE,
Circuit Judge.

118 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

COUNTY OF WAYNE, *ss*:

Alexander Munro, being duly sworn, deposes and says that on the 15th day of February, 1895, an order was entered in this cause by the solicitors for complainant for the taking of testimony within sixty days from the service of notice of such order; that notice of said order was served by this deponent on the solicitors for the defendant The Detroit Railway on the same day, and that, proceeding under said order, a large amount of testimony has been taken by each of the parties, the time to take testimony being kept open beyond the sixty days by mutual consent; that both the parties

have completed their testimony, and D. Augustus Straker, Esq., the circuit court commissioner before whom the same was taken, filed his report of said testimony on the 11th day of February, 1896, and this cause is now ready for hearing thereon.

ALEXANDER MUNRO.

Subscribed and sworn to before me this 13th day of February, 1896.

BERNARD B. SELLING,
Notary Public, Wayne County, Michigan.

119 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

On filing an affidavit of the service of notice of the order of February 15, 1895, to take proofs in this cause within sixty days, and said sixty days and the extensions thereof having expired, and the proofs of both parties having been taken, on motion of Brennan, Donnelly & Van De Mark, solicitors for complainant, it is ordered that the proofs in this cause be, and the same are hereby, closed.

Detroit, February 13, 1896.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

To solicitors for defendants:

Take notice that an order closing proofs, of which the above is a copy, has been entered in the above-entitled cause.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

120 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

COUNTY OF WAYNE, *ss:*

Edward A. Stricker, being duly sworn, deposes and says that on the 13th day of February, 1896, he served a notice of order closing proofs, notice of hearing, and copy of affidavit to close testimony, — each of which the annexed are true copies, personally upon Charles Flowers, solicitor for said the Detroit railway; and deponent further says that on the same day he served copies of each of the same, of which the annexed are true copies, on John J. Speed, solicitor for said city of Detroit, be delivering the same to George Palmer, at the office of the corporation counsel of the city of Detroit, said

Palmer being then in charge of said office and said Speed being then absent therefrom.

EDWARD A. STRICKER.

Subscribed and sworn to before me this 14th day of February, 1896.

WALTER BARLOW,
Notary Public, Wayne County, Michigan.

121 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

COUNTY OF WAYNE, *ss:*

I, D. Augustus Straker, circuit court commissioner in and for said county of Wayne, do hereby certify and report that in pursuance of an order of this court heretofore made in the above-entitled cause and dated the second day of April, A. D. 1895, by which it was referred to me, said circuit court commissioner, to take testimony of witnesses in said cause within sixty days after notice of said order—

I, the subscriber, D. Augustus Straker, the said circuit court commissioner, residing in the city of Detroit, in said county of Wayne, to whom the execution of said order was confided, have taken testimony in said cause on part of said complainants and defendants, and that such testimony is hereto annexed and made a part of this my report, and that such testimony consists of the depositions of Charles R. Forster, Henry A. Everett, Henry D. Ludden, Emory Wendell, Frederick Carlisle, Sidney D. Miller, and that the testimony of said deponents was taken by David E. Greenstine, one of the circuit court commissioners for Wayne county, State of Michigan, during my absence from the city, at his office, in the city of Detroit, in the said county of Wayne; also the depositions of C. M. Burton, Paul Gies, Charles Forster, Henry A. Everett, and John B. Corliss, Tom L. Johnson, Jere. C. Hutchins, Jacob Guthard, Ford Starring, George E. Currie, Fred. A. Baker, Frank E. Snow, and Strathearn Hendrie, witnesses produced before me on

122 the part of said complainants and defendants respectively; that I have carefully compared and certified the following exhibits, hereto annexed and made a part of this my report, to wit: (Exhibit A), "A bill to authorize the common council of the city of Detroit to grant permission to any street railroad company within said city to use the roads, tracks, wires, and poles of any other street railroad company situated within certain territory within said city, and to authorize the street railroad company to which such permission is granted to acquire by condemnation the right to use such roads, tracks, wires, and poles for the purpose of terminal facilities;" (Exhibit B), from Journal of Common Council Proceedings for

1862, page 55, entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit;" (Exhibit C), from Journal Common Council Proceedings for 1862, page 110, being a resolution to the common council of the city of Detroit, adopted the 26th day of August, 1862, as shown by the official and also by the printed proceedings of the common council; (Exhibit D), from Journal of the Proceedings of Common Council for 1862, page 131, being a notice published by the comptroller of the city of Detroit, in pursuance of the foregoing resolution; (Exhibit E), from Journal of Common Council Proceedings for 1862, being report of the comptroller of the city of Detroit to the common council of the city, dated September 30, 1862; (Exhibit F), from Journal of Common Council Proceedings for 1876, page 630, being a report of committee; (Exhibit G), from Journal of Common Council Proceedings for 1876, page 646, being extract from journal under head of unfinished business; (Exhibit H), from Journal of Common Council Proceedings for 1876, page 650, being communication from the Central Market, Cass Ave. & Third Street ra-lway; (Exhibit I), from Journal Common Council Proceedings for 1877, page 663, being extract relative to an ordinance authorizing the Central Market and Cass Avenue and Third Street to construct and operate its railroad, showing the adoption of the ordinance; (Exhibit J), from Journal of Common Council Proceedings for 1877, page 12,
123 the extract being a veto from the mayor; (Exhibit K), from Journal of Common Council Proceedings for 1877, page 14, being resolution introduced by Alderman Dunlap; (Exhibit L), from Journal of Common Council Proceedings for 1877, page 15, being the action of the council adopting the foregoing resolution; (Exhibit 1), being the original ordinance granted by the common council of the city of Detroit, approved Dec. 4, 1894; (Exhibit 2), ordinance granted to Detroit railway, approved April 19, 1895; (Exhibit 3), ordinance granted to Detroit railway, approved June 4, 1895; (Exhibit 4), ordinance granted to Detroit Railway, defendant, and approved August 13, 1895; (Exhibit 5), ordinance granted by the common council of the city of Detroit to Detroit Railway, defendant, approved Oct. 8, 1895; (Exhibit 6), acceptance of Detroit railway of ordinance approved August 13, 1895; (Exhibit 7), being acceptance of ordinance approved August 13, 1895, granted to the Detroit railway, and executed by the complainant, The Detroit Citizens' Street Railway Company; (Exhibit 8), being acceptance of the Detroit railway and the Detroit Citizens' Street Railway Company of the ordinance granted by the common council to the Detroit railway, and approved Oct. 8, 1895; (Exhibit 9), being acceptance of the Detroit railway of the foregoing ordinance; (Exhibit 10), being an ordinance granted to the Detroit city railway, approved August 19, 1863, and shown on page 150 of the Journal Proceedings of the Common Council of 1863; (Exhibit 11), from Journal of Common Council Proceedings for 1864, page 169, being communication of Mayor K. C. Barker, of the city of Detroit, vetoing an ordinance granted to the Detroit city railway; (Exhibit 12),

from Journal of Common Council Proceedings for 1864, page 172, being a memorandum showing a petition of F. Buhl and ten others, asking that an ordinance be passed constituting them or such persons as they should designate as a co-py for the construction and maintenance of a railroad on Fort street, extending from Woodward avenue; (Exhibit 13), from Journal of Common Council Proceedings for 1864, page 104, being report of the committee to whom was referred the petition of Mr. Buhl and other- above referred to; (Exhibit 14), from Journal
124 of Common Council Proceedings for 1864, pages 236 and 237, being communication of the mayor vetoing the ordinance above referred to, together with a communication of a solicitor for the petitioners, and the vote of the common council showing the passage of the ordinance over the mayor's veto; (Exhibit 15), from Journal of the Common Council Proceedings for 1865, pages 266 and 267, 63rd and 64th volume, being ordinance granted to Mr. Buhl and others for a street-car line on Fort street and other streets; (Exhibit 16), from Journal of Common Council Proceedings for the Years 1865 and 1866, being a resolution adopted by the common council April 14, 1865, proposed by Ald. Gies, asking for the opinion of the city counselor with reference to the compliance of the city railway with their ordinance in the construction of their several routes, found on page 4; (Exhibit 17), from Journal of Common Council Proceedings for 1865 and 1866, page 6, being reply of the city counsellor and city attorney to the resolution above referred to; (Exhibit 18), from Journal of Common Council Proceedings for 1865 and 1866, page 41, being resolution offered by Ald. Gallagher and adopted by the common council on May 16, 1865, requesting the city counsellor to give to the common council his opinion as to whether the Detroit City Railway Company are entitled to run their cars on any of the streets where railroads are not then constructed: (Exhibit 19), from Journal of Common Council Proceedings for 1865 and 1866, page 43, being reply *to* the city counsellor to the resolution of Ald. Gallagher, presented to the common council May 23, 1865, and accepted by the council on that date; (Exhibit 20), from Journal of Common Council Proceedings for 1865 and 1866, page 46, asking the city counsellor and city attorney to report to the common council whether the failure of the Detroit City Railway Company to build a road on Grand River avenue within the time specified by their charter gives the council authority to grant to another company power to build and operate a road on said street and on Woodward avenue from Grand River avenue to Jefferson avenue; (Exhibit 21), from Journal of Common Council Proceedings for 1865, page 60, being the answer of the city
125 counsellor to the foregoing resolution, bearing date June 6, 1865; (Exhibit 22), from Journal of Common Council Proceedings for 1865 and 1866, page 63, being a resolution offered by Alderman Gallagher and adopted by the common council on the 8th day of June, 1865, wherein the common council adopted the resolution that they hold out inducements unto some respectable parties for the construction of a street railway from the corner of

Jefferson avenue and Woodward avenue, along Woodward avenue as far as Grand River avenue as far as the city limits; (Exhibit 23), from Journal of Common Council Proceedings for 1868, page 17, being memorandum of a petition filed by Mr. Mansfield and others for permission to construct a street railway on Woodward avenue and Grand River avenue, under date April 21, 1868; (Exhibit 24), from Journal of Common Council Proceedings for 1868, pages 44, 45, and 46, being ordinance adopted by the council granting to Nathaniel Prouty, Moore F. Dickinson, William B. Wesson, Harvey King, and James T. Mansfield an ordinance for the construction and operation of a street-car line on Woodward and Grand River avenues, approved May 1, 1868; (Exhibit 25), from Journal of Common Council Proceedings for 1868, page 102, being the acceptance of the ordinance above mentioned, notice of which was filed in the city clerk's office; (Exhibit 26), from Journal of Common Council Proceedings for 1865 and 1866, page 143, being a report of a special committee of the common council, together with the resolution adopted by them, under date July 17, 1866; (Exhibit 27), from Journal of Common Council for 1870, page 153, being a petition of the Grand River Street Railway Company asking permission to extend their tracks down Woodward avenue from Fort street to Jefferson avenue; (Exhibit 28), from Journal of Common Council Proceedings for 1870, being report of the committee on above petition shown on page 166, under date June 21, 1870; (Exhibit 29), from Journal of Common Council Proceedings for 1870, page 188, being report of the committee and city attorney; (Exhibit 30), from Journal of Common Council Proceedings of 1870, page 209, being a petition of property-holders on Woodward avenue asking the common council to extend the Grand River
126 track down Woodward avenue; (Exhibit 31), from Journal of Common Council Proceedings of 1870, pages 244 and 245, being report of the committee of the above petition of property-owners, together with resolution adopted by the common council; (Exhibit 32), from Journal of Common Council Proceedings for 1871, page 162, being a resolution offered by Ald. Folsom with reference to the extension of the track of the Grand River Avenue street railway down Woodward avenue to Jefferson from Fort street; (Exhibit 33), from Journal of the Common Council Proceedings for 1871, page 196, being report of city attorney upon resolution, submitting the ordinance; (Exhibit 34), from Journal of Common Council Proceedings of 1871, page 260, being ordinance granted by the common council, approved June 26, 1871; (Exhibit 35), from Journal of Common Council Proceedings of 1873, pages 86 and 87, being an ordinance granted to the Western Transit railway, approved March 28, 1873; (Exhibit 36), from Journal of Common Council Proceedings for 1873, pages 118 and 119, being the ordinance granted by the common council over the mayor's veto on April 15, 1873, granting to the Grand Trunk Junction street railway the lines known as the Congress & Baker Street R'y lines, shown on page 118 and 119 of the council proceedings of 1873; (Exhibit 37), from Journal of Common Council Proceedings of 1873, pages 304 and 305, being

ordinance granted by the common council over the veto of the mayor June 13, 1873, to the Detroit and Grand Trunk Junction street railway, granting the line on Congress, Larned, Randolph, Jos. Campau, Seventh, Baker, and 24th streets; (Exhibit 38), from Journal of Common Council Proceedings of 1873, pages 368 and 369, being ordinance passed by the common council and approved July 11, 1873, granting to the St. Aubin Street railway the right to construct a road on St. Aubin avenue; (Exhibit 39), from Journal of Common Council Proceedings of 1886, pages 374 and 375, being an ordinance granted to the Highland Park Railway Company, approved July 13, 1886, granting a line on Woodward avenue, commencing at the railroad crossing and extending on Woodward avenue northerly to the city limits; (Exhibit 40), from Journal of Common Council Pro-
127 ceedings of 1888, pages 617 and 618, being a veto message of Mayor Pridgeon, under date Dec. 11, 1888, vetoing the ordinance granted to W. A. Jackson, Frank E. Snow, and others for a street railway on certain street not then occupied by a street railway, and the concurrence of the council in his recommendation, which was that such franchise should be sold to the highest bidder; (Exhibit 41), from the Journal of the Common Council Proceedings of 1888, page 674, being a resolution adopted by the common council October 2, 1888, offered by Ald. Griggs in accordance with the recommendation of the mayor above referred to, providing for the appointment of a committee of five to advertise for proposals for the construction and operation of street railway lines in the city of Detroit; (Exhibit 42), from Journal of Common Council Proceedings of 1888, pages 807 and 808, being the report of the committee appointed upon the resolution of Ald. Griggs, above referred to, together with the proposition of bids that were submitted in accordance with the advertisement authorized by the resolution and submitting to the common council ann ordinance granting eight tickets for a quarter morning and evening; (Exhibit 43), from Journal of Common Council Proceedings of 1888, pages 809 and 810, being the adoption of the ordinance and acceptance of the bid of John B. Corliss, M. S. Forbus, and John F. Barry and Henry Steers, above referred to; (Exhibit 44), from Journal of Common Council Proceedings of 1888, pages 826, 827, and 828, being a communication of Mayor Pridgeon, dated Dec. 18, 1888, vetoing the ordinance above referred to, passed by the council in accordance with the advertisement and bid of the resolution of Ald. Griggs; (Exhibit 45), from Journal of Common Council of 1889, pages 31, 32, and 33, being an ordinance granted to the Detroit city railway, approved January 23, 1889; (Exhibit 46), agreement between the Detroit Citizens' Street Railway Company and the Detroit Railway Company, May 24, 1895; (Exhibit 47), agreement between the Detroit Citizens' Street Railway Company and the Detroit Railway Company, May 24, 1895; (Exhibit 49), *In re* third track on Jefferson between Griswold and Shelby. Agreement between the Detroit Citizens' Street Railway Company and the Detroit
128 railway, May 24, 1895; (Exhibit 50), *In re* exchange usage

of Griswold and Woodbridge Street track; agreement between the Detroit Citizens' Street Railway Company and the Detroit railway, May 24, 1895; (Exhibit 51*a*), sketch of lines on Capitol square; (Exhibit 51*b*), memorandum of agreement between Citizens' Street Railway Company and the Detroit railway, made May 4, 1895; (Exhibit 52), letter of acceptance of Citizens' railway; (Exhibit 53), acceptance; (Exhibit 54*a*), agreement between the Detroit Citizens' Street Railway Company and the Detroit railway, September 24, 1895; (Exhibit 54*b*), sketch of lines of Rowland St. and Michigan Ave; (Exhibit 55), articles of association of the Detroit railway; (Exhibit A 1), ordinance approved Dec. 27, 1862; (Exhibit A 2), ordinance approved Jan. 12, 1863; (Exhibit A 3), from Journal of Common Council Proceedings for 1863–'4, page 140, being report of the committee on streets; (Exhibit A 4), from Journal of Common Council Proceedings for 1863–'4, page 150, being an ordinance regulating the construction and use of the tracks of the Detroit city railway; (Exhibit A 5), from Journal of Common Council Proceedings for 1863–'4, page 169, being an extract of proceedings of common council relative to the completion of routes of the Detroit city railway; (Exhibit A 6), from Journal of Common Council Proceedings for 1864, page 287, being an ordinance further regulating the construction and use of the tracks of the Detroit city railway; (Exhibit A 7), from Journal Common Council Proceedings for 1864–'5, page 163, being commun-cation from city officers as to an ordinance granting certain rights and privileges to the Detroit city railway; (Exhibit A 8), from Journal of Common Council Proceedings for 1864–'65, page 169, being communications from city officers, a veto of mayor, Sept. 27, 1864; (Exhibit A 9), from Journal of Common Council for 1864–'65, page 171, being an ordinance granting certain rights and privileges to the Detroit city railway, approved October 8, 1864; (Exhibit A 10), from Journal of Common Council Proceedings for 1865–'66, page 4, being a resolution from common council April 4, 1865, as to whether the City Street Railway Company has complied with the
129 ordnance in regard to the completion of their several routes; (Exhibit A 11), from Journal of Common Council Proceedings for 1865–'66, page 6, being report of city counsellor and city attorney April 11, 1865, as to the progress of the street railway company in complying with the requirements of the ordinance relative to the completion of their several routes; (Exhibit A 12), from Journal of Common Council Proceedings for 1865–66, page 43, report of city counsellor and city attorney May 21, 1861; (Exhibit A 13), from Journal of Common Council Proceedings for 1865–'66, page 46, being resolution of common council; (Exhibit A 14), from Journal of Common Council Proceedings for 1865–'66, page 60, being report of committee June 6, 1865, in compliance with resolution of May 29th; (Exhibit A 15), from Journal of Common Council Proceedings for 1866–'7, page 313, being a resolution for the construction of a street railway from Jefferson avenue to Grand River street, on Woodward avenue, and west on Grand River street as far as may be agreed upon; (Exhibit A 16), from Journal of

Common Council Proceedings for 1866–'67, page 317, being report of committee in connection with last-named resolution; (Exhibit A 17), from Journal of Common Council Proceedings for 1868, page 17, being an extract of proceedings of common council April 21, 1868, relative to a petition for permission to erect street railway up Woodward avenue and through Grand River street to the line of the Michigan Southern railroad; (Exhibit A 18), from Journal of Common Council Proceedings for 1868, pages 119, 120, being petition of D. B. Plumer and 125 others for extension of Grand River street railway, June 9, 1868; (Exhibit A 19), from Journal of Common Council Proceedings for 1873, page 359, being an ordinance authorizing the Detroit City Railway Company to maintain a double track on Jefferson —, approved July 8, 1873; (Exhibit A 20), from Journal of Common Council Proceedings for 1875, page 5, being an ordinance to amend section three, chapter 48, of the Revised Ordinances of Detroit of 1871; (Exhibit A 21), from Journal of Common Council Proceedings of 1875, page 545, being an ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue from Woodward avenue to Sixth street; (Exhibit A 22), from Journal of Common Council Proceed-
130 ings of 1876, page 493, being an ordinance to amend section 1 of an ordinance approved October 1, 1875, entitled "An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue from Woodward avenue to Sixth street;" (Exhibit A 23), from Journal of Common Council Proceedings of 1877, page 520, being an ordinance to amend section 1 of an ordinance approved August 18, 1876, entitled "An ordinance to amend section 1 of an ordinance approved October 1, 1875, entitled "An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue from Woodward avenue to Sixth street;" (Exhibit A 24), from Journal of Common Council Proceedings of 1879, page 632, being report of committee; (Exhibit 24½), from Journal of Common Council Proceedings of 1879, page 666, being an ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes; (Exhibit A 25), from Journal of Common Council Proceedings of 1880, page 658, being an ordinance authorizing the Detroit City Railway Company to construct and operate a street railway in Farrar street; (Exhibit 26), from Journal of Common Council Proceedings, page 372, being an ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Griswold street between State and Larned streets; (Exhibit A 27), from Journal of Common Council Proceedings for 1884, page 126, being an ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Woodbridge street from the present terminus of its double track near Second street westward to the east line of Third street, and so as to connect with the main track on said street (in the form of a Y) and to remove the present track across Third street and the

turn-table at the terminus thereof and relay the same across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street thirty feet west of the west line of Third street; (Exhibit A 28), from Journal of Common Council Proceedings of 1884, page 484, being an
131 ordinance to authorize the Detroit City Railway Company to construct and operate a double track through the Campus Martius to the city of Detroit; (Exhibit A 27), from Journal Common Council Proceedings of 1884, page 757, being an ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto fixing and determining a new street railway route and authorizing the Detroit city railway to establish, construct, and operate a street railway thereof; (Exhibit A 30), from Journal of Common Council Proceedings of 1885, page 382, being an ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto fixing and determining a new street railway route and authorizing the Detroit city railway to establish, construct, and operate a street railway thereon; (Exhibit A 31), from Journal Common Council Proceedings of 1885, page 534, being an ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and supplementary to amendments and supplements thereto authorizing the extension of railway tracks in Russell street; (Exhibit A 32), from Journal of Common Council Proceedings of 1887, page 516, being an ordinance supplementary to an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,'" approved November 24, 1862, and supplementary to amendments and supplements thereto authorizing and requiring the Detroit city railway to extend its street railway line from the present terminus on Third street or avenue along said Third street or avenue to its intersection with Holden road, thence in a westerly direction along the Holden road to the crossing of the Detroit & Bay City railroad; (Exhibit A 34), from Journal of Common Council Proceedings of 1888, page 782, being an ordinance supplementary to an ordinance entitled "An ordinance to permit certain
132 persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the extension of railway tracks in Trumbull avenue; (Exhibit A 35), from Journal Common Council Proceedings, 1889, page 31, being an ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and supplementary to amendments and supplements thereto and supplementary to an ordinance

entitled "An ordinance supplementary to an ordinance entitled An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved Nov. 24, 1862, and to the amendments thereto and for other purposes," approved Nov. 14, 1879, and all amendments and supplements thereto; (Exhibit A 36), from Journal of Common Council Proceedings of 1889, page 148, being report of committee on extension Michigan avenue and ordinance; (Exhibit A 37), from Journal of Common Council Proceedings of 1889, page 172, being ordinance approved April 5, 1889; (Exhibit A 38), from Journal of Common Council Proceedings of 1889, page 832, being an ordinance authorizing the Detroit City Railway Company to extend their tracks on Russell street from Ferry avenue to Lake Shore & Michigan Southern Railroad Company; (Exhibit A 39), from Journal of Common Council Proceedings of 1891, page 504, being an extract of ordinance relating to rapid transit, and also on page 521; (Exhibit A 40), from Journal of Common Council Proceedings of 1891, page 553, being veto of Mayor Pingree to above ordinance; (acceptance No. L) by Detroit City Railway Company of ordinance of Nov. 14, 1879; (acceptance No. 2) by Cass Avenue line of same; (acceptance No. 3) by Baker and Congress line of same; (acceptance No. 4) by Detroit city railway, Detroit and Grand Trunk Junction street railway, and Central Market, Cass and Third street railway of ordinance of November 14, 1879; (acceptance No. 5) by Detroit Street Railway Company of ordinance of Dec. 11, 1880; (acceptance No. 6) by Detroit Railway Company of ordinance of July 8,
133 1888$\frac{2}{3}$; (acceptance No. 7) by Detroit City Railway Company of ordinance March 29, 1884; (acceptance No. 8) by Detroit City Railway Company of ordinance of July 21, 1884; (acceptance No. 9) by Detroit City Railway Company of ordinance of July 5, 1885; (acceptance No. 10) by Detroit City Railway Company of ordinance of July 31, 1885; (acceptance No. 11) by Detroit City Railway Company of ordinance of Sept. 1, 1886; (acceptance No. 12) by Detroit City Railway Company of ordinance of July 26, 1887; (acceptance No. 13) by Detroit City Railway Company of ordinance of Oct. 27, 1888; (acceptance No. 14) bond in connection with acceptance by Detroit City Railway Company of ordinance of Jan. 3, 1889; (acceptance No. 14$\frac{1}{2}$) resolution regarding extension of Gratiot Avenue line, etc.; (acceptance No. 15) by Detroit City Railway Company of ordinance March 17, 1884; (acceptance No. 16) by Detroit City Railway Company of ordinance passed over mayor's veto Jan. 4, 1887; (Exhibit B 1), conveyance of bill of sale from Detroit City Railway Company to Detroit Street Railway Company, Dec. 1, 1890; (Exhibit B 2), conveyance from Detroit Street Railway Company to Detroit Citizens' Street Railway Company; (Exhibit B 3), conveyance from Detroit City Railway Company to Detroit Citizens' Street Railway Company; (Exhibit B 4), conveyance from Grand River Street Railway Company to Grand River Railway Company; (Exhibit B 5), conveyance from Grand River Railway Company to Detroit Citizens' Street Railway Company; (Exhibit B 6), conveyance from Grand River Railway Company to Detroit Citizens' Street

Railway Company; (Exhibit B 7), ordinance providing for rapid transit on lines of Detroit Street Railway Company; (Exhibit B 8), proceedings common council regarding taxation, tickets, etc.; (Exhibit B 9), mayor's veto of ordinance, July 1, 1891; (Exhibit B 10), ordinance regarding sale of tickets; (Exhibit B 11), ordinance regarding sale of tickets, etc.; (Exhibit C 1), report of special committee and copy of ordinance of Dec. 27, 1888; (Exhibit C 2), report of committee of common council; (Exhibit C 3), report of committee common council; (Exhibit C 4), ordinance author-
134 izing Fort Wayne and Elmwood Railway Company to extend and operate its line, etc.; (Exhibit C 5), ordinance approved January 3, 1889; (Exhibit Snow 1), being agreement between Detroit city railway and Highland Park railway; (Exhibit Snow 2), being agreement between Detroit city railway and Highland Park railway; (Exhibit B), being map of city of Detroit, showing street railways therein, with abstract of same attached.

That said testimony was taken at my office, the subscribed, in the city of Detroit, in the county of Wayne, and at the office of David E. Greenstine, one of the commissioners for Wayne county, Michigan; all of said testimony taken, commencing on the 30th day of April, A. D. 1895, and from time to time, and ending on the 16th day of January, A. D. 1896; that each of said witnesses before giving their testimony was duly sworn by the subscriber, and by David E. Greenstine, the aforesaid other commissioner to testify the truth, the whole truth, and nothing but the truth, in relation to said cause; that the testimony of each and all of said witnesses was reduced to writing, and was read over by said witnesses, and by them subscribed in my presence, and in the presence of David E. Greenstine, the aforesaid other commissioner; that said complainant attended said examination by Fred. A. Baker and Harrison Geer, its solicitors, and the said defendants by its solicitors, Benton Hanchett, Herschel H. Hatch, Charles Flowers, and J. B. Corliss.

All of which is respectfully submitted.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Michigan.

Dated Detroit, February 11, A. D. 1896.

135 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET R'Y CO., Complainant,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

To Messrs. John B. Corliss and Charles Flowers, solicitors for the def't The Detroit Railway, and John J. Speed, solicitor for def't The City of Detroit.

SIR-: You will please take notice that the following witnesses, to wit, Sidney D. Miller, Emory T. Wendell, George V. N. Lothrop,

Albert G. Boynton, Fred. Carlisle, Henry M. Duffield, James D. Hawks, Henry Ludden, and Charles R. Forster, all residing in the city of Detroit, Wayne county, Michigan, will be examined on behalf of the above-named complainant, before D. Augustus Straker, Esq., a circuit court commissioner in and for said county, at his office, No. 40 State street, in said city of Detroit. Such examination to commence on the second day of April, A. D. 1895, at 10 o'clock in the forenoon, and to proceed thereafter as shall suit the convenience of said commissioner.

Dated March 6, 1895.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Dated March 6th, 1895.

ASHLEY POND AND
F. A. BAKER,
Of Counsel.

136 STATE OF MICHIGAN, } *ss:*
County of Wayne, }

Thomas M. Donnelly, being duly sworn, deposes and says that on the seventh day of March, A. D. 1895, he served a notice of which the within is a true copy on John B. Corliss, one of the solicitors for the Detroit railway, by leaving the same in the office of said Corliss, with Thos. T. Leete, partner of said Corliss, and the latter being absent from his office; that on said seventh day of March, A. D. 1895, he served a true copy of the within notice on John J. Speed, solicitor for the city of Detroit, by delivering the same to Miss Kennedy, in charge of the office of said Speed, the latter being absent from his office.

THOS. M. DONNELLY.

Subscribed and sworn to before me this 18th day of March, A. D. 1895.

ALEXANDER MUNRO,
Notary Public, Wayne Co., Mich.

Testimony.

STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.
} No. 15030.

F. A. Baker, for complainant; Hanchett, Corliss & Flowers, for defendants.

Testimony taken before David E. Greenstine, circuit court commissioner, county of Wayne, State of Michigan, in pursuance of a notice, a copy of which is hereto annexed, on part of complainant.

APRIL 30TH, 1895.

137 Mr. FORSTER, sworn for plaintiff:

Q. Are you the present city clerk of the city of Detroit?
A. Yes, sir.
Q. I show you volume labeled Journal of the Common Council, City of Detroit, 1860 to 1863, I would like to know whether or not that is one of the official records of the city of Detroit?
A. Yes, sir.
Q. How is the Journal of the Common Council, in printed record or written?
A. Written, also printed.
Q. Are the ordinances published in connection with the council proceedings?
A. Yes, sir.
Q. I show you page 55 of the Journal for 1862, I would like to know if that is a copy of an ordinance passed by the common council of the city of Detroit and approved by the mayor upon the 24th day of May, 1862?

Mr. HANCHETT: I object to that as not competent testimony. The ordinance must be proven by the record.

Q. Are the ordinances written?
A. Yes, sir.
Q. Written and published?
A. Yes, sir.
Q. The original copy signed by the mayor too ——

Mr. HANCHETT: The only point is that no mistake be made in the ordinance and its terms.

Q. Can you bring the ordinance here, the one that has the mayor's signature?
A. Yes, sir.

Q. Are the notices that are issued by the city compiled and printed with the official proceedings?

A. Yes, sir.

Q. I show you page 131 of this volume, that you said is a notice published by the controller of the city?

138 A. Yes, sir.

Mr. HANCHETT: I object to that as not competent.

Q. The fact that it appears here in print, does that show it was published in the newspapers in Detroit, in the ordinary course of business?

Objected to.

Q. Would anything be in here except what was published in the official paper?

A. No, sir, if it was not published in the official paper.

Q. I show you page 125 and call your attention to the communication from the controller dated Detroit, September 30th, 1862, is that a report made to the common council by the then city controller?

Mr. HANCHETT: I object to that testimony as incompetent.

A. Yes, sir, it is.

Q. Can you bring the written record of that?

A. Yes, sir, I can bring the written or original proceedings.

Q. Can you tell us as to the accuracy of this?

A. I have not compared them.

Q. The official proceedings are printed in the paper before they are published?

A. Yes, sir—I don't know how they did at that time.

Q. They are not copied until some time after?

A. Yes, sir; I am speaking of what goes on now.

Q. Will you go and get the Journal for 1862?

A. Yes, sir.

Cross-examination:

Q. How long have you been clerk of the city of Detroit?

A. Since January, 1892.

139 Q. Before that were you connected with the clerk's office?

A. Yes, sir.

Q. How long?

A. One year.

Q. So prior to 1891 you were not connected with the city clerk's office?

A. I was in the clerk's office in 1887.

Q. Is that the earliest date when you became connected with the clerk's office?

A. Yes, sir.

Q. Then you have no personal knowledge about these matters which occurred in 1862 and 1863?

A. No, sir, only as the records show

(S'g'd) CHARLES R. FORSTER.

Subscribed and sworn to before me this 11th day of November, A. D. 1895.

(S'g'd) D. AUGUSTUS STRAKER,
Circuit Court Commissioner.

Mr. HENRY A. EVERETT, sworn for plaintiff:

Q. Where do you reside?

A. Cleveland, Ohio.

Q. Are you connected with the Detroit railway?

A. Yes, sir.

Q. One of its organizers?

A. Yes, sir.

Q. A large stockholder and one of its officers?

A. Yes, sir.

Q. Are you interested in the street railway business in other cities?

A. Yes, sir.

Q. In what cities?

A. Cleveland, Toronto, London, Canada, these are the only companies I am an officer in; I am interested in others.

140 Q. And you are familiar with the street railway system in these places?

A. Yes, sir.

Q. And also, I suppose, in other cities where you are not interested as a stockholder or an officer?

A. Yes, sir.

Q. You assisted in laying out the route of the Detroit railway?

A. Yes, sir.

Q. Have they any structure in Cleveland that has the same relation to the street railway business of that city that the ferry does in Detroit?

Objected to as immaterial.

A. There are no ferries in Cleveland.

Q. There is a viaduct there across the river?

A. Yes, sir.

Q. Which is a great place for travel?

A. Yes, sir.

Q. Now, since you organized this company and laid out its route have you had the counsel of your company prepare a bill which was introduced at Lansing?

Mr. HANCHETT: I object to that as immaterial.

A. Yes, sir.

Q. I show you bill entitled "A bill to authorize the common council of the city of Detroit to grant permission to any street railroad company within said city to use the roads, tracks, wire and

poles of any other street railroad company, situated within certain territory within said city, and to authorize the street railroad company to which such permission is granted to acquire by condemnation the right to use such tracks, roads, wires and poles for the purpose of terminal facilities." Was that bill prepared at the request of your company?

Mr. HANCHETT: I object to that as immaterial and irrelevant.

141 A. Yes, sir.

Q. In which you sought the legislation which would enable you to secure terminal facilities on Woodward avenue?

A. I thought it was absolutely essential to go to the depots.

Q. The main purpose of that bill would be to secure terminal facilities on Woodward avenue?

A. No answer.

Q. The main purpose, that is your main object?

A. I am not prepared to say that it was the main object.

Q. Are there any other streets that is not occupied going toward the river, is Griswold street in that territory?

A. That is on the assumption that we only wanted Woodward avenue for the ferry company. We also desired to have an outlet for the depots, both the Union depot and Michigan Central, as well as the Brush Street depot.

Q. Did you think to get that going to the depots by Woodward avenue?

A. Yes, sir.

Q. Now, I suppose you are a practical railway man?

A. I guess so.

Q. Of a good many years' experience?

A. Yes, sir.

Q. What usefulness would it be to you or the public to obtain terminal facilities on Woodward avenue?

A. A street railway to be a success wants to run where people want to go.

Q. In order to run your railroad where people want to go you ought to go on Woodward avenue.

A. I think so.

Q. Why?

142 A. Because for a great many years it has been one of the principal traveled streets of the city of Detroit.

Q. And the business traffic of the city verges on that street from the Grand Circus park down to the ferry?

A. Very largely.

Q. And because of the situation and the inclination of the people to go on Woodward avenue you sought the legislation proposed in this bill?

A. The bill covered the half-mile area which was received in our ordinance for other companies' rights on the streets.

Q. Had your experience with the practical effect of the viaduct in Cleveland on the traffic of the city led you to the same conclu-

sion in this city that the railroad system ought to verge toward the viaduct or ferry in this city?

A. Well, I do not know whether it is quite a parallel case or not, the population of Cleveland is divided in a different manner from what it is in Detroit, the largest part of the population in Cleveland is in the east end.

Q. Quite a large number of the present street railways there verge on Superior street not far from the viaduct?

A. Yes, sir.

Q. A great many go across on the viaduct?

A. Yes, sir, the tracks on the viaduct were built by the city.

Q. Do you know other cities that are situated in a general way the same as Cleveland and Detroit are with reference to having a common business center or verging point like that?

A. Well, I don't know; I think Chicago are somewhat similar; all the roads go right in on the south side——

Q. Have you ever been in San Francisco?

A. Yes, sir.

143 Q. Where they have a ferry at the foot of Market street?

A. Yes, sir, near.

Q. Nearly all the street railways verge into Market street?

A. Yes, sir.

Q. That city is quite analogous to Detroit?

A. I think it was.

Q. As a practical street railway man you have no doubt about the utility of a system of that kind, have you?

A. No, sir.

Q. The companies whose lines run toward the common center like that do the business?

A. Yes, sir.

Q. The major part of it?

A. Yes, sir.

Cross-examination:

Q. What did you have in mind and what was the purpose of the legislation referred to in the question put to you by Mr. Baker which you sought from the legislature of Michigan?

A. We sought the right to condemn by ordinary condemnation proceedings when declared necessary by the city council and a jury, the right to condemn terminal facilities and deliver our patrons as near the ferries and the depots as possible, a condemnation limited in area to Third street, Adams avenue and St. Antoine street in the center of the city of Detroit.

Q. What length or distance on Woodward avenue was sought to be covered by the legislature?

A. Well, I really do not know the exact distance, from Adams avenue to the depot?

Q. About?

144 A. I should think about 3,500 feet, but Woodward avenue was not mentioned any more than any other street.

Q. But you were inquired of by Mr. Baker with reference to Woodward avenue?

A. Yes, sir.

Q. Over that space of Woodward avenue the business of the city in the way of retail trade, merchandise, is largely centered, is it not?

A. Yes, sir.

Q. The entire part of that street is occupied by mercantile houses and hotels?

A. Yes, sir.

Q. Isn't it common to all cities to have such business streets and centers?

A. I think it is.

Q. It is common to all cities that the travel which comes from different parts of the city ordinarily seeks that center?

A. Yes, sir.

Q. How many miles of railroad is your company, the Detroit railway, engaged in constructing?

A. Sixty-three.

Q. Within the city of Detroit?

A. Fifty-two within the city of Detroit and eleven without.

Q. But the 63 miles of railroad all tends to this common center?

A. Yes, sir, and runs under one fare.

Q. Do the cross-lines that you speak of come to the common center or connect with lines which come to the common center?

A. Yes, by free transfers.

Q. What difficulty exists in making use of the road in common by different companies at the center?

145 A. There is no practical difference in operating.

Q. Is it done in other cities?

A. Yes, sir.

Q. Now what cities can you speak of where the different companies at the centers occupy a common track?

A. In the city of Cleveland the tracks are occupied in common, covering to exceed twelve miles of track and the rights are reserved there to allow any new company to get within an avenue of a mile of the center of the city coming over the tracks of the other companies.

Q. How many different companies make use of the common track in Cleveland?

A. Well, at the present time the companies have gotten down to two, there are two there now, there were at one time eleven different companies.

Q. They have come down to two by consolidation?

A. Yes, sir.

Q. Or by the purchase of one company by another?

A. Yes, sir.

Q. How many miles of street railroad in the city of Cleveland which centers at this common point?

A. About 195, it may be a little more, there was a little mileage built last fall.

Q. Have you any personal knowledge of any other city, the situation in any other city in regard to the different companies occupying a common track, or tracks in common?

A. Yes, sir, to some extent.

Q. Name some of them.

A. In Cincinnati and in Chicago the three different companies occupy the same streets in certain portions of the downtown parts of the city. The companies in Boston have now all been consolidated, but previous to that time the companies occupied the same territory at the center of the city.

146 Q. At Pittsburg there are a number of different companies running in the center of the city on the same track?

A. Yes, sir.

Q. In organizing the Detroit railway and in locating your system of street railway lines and tracks, what object had you and your associates in view?

A. We had the object of making a good business investment.

Q. I mean in reference to the line of road?

A. In laying out the routes, in the first place we looked over the city to find out where the greatest need existed for accommodation and we find our Warren Avenue route for one and the Fourteenth Avenue line for the other had been petitioned for by the people a number of years ago and in looking over that territory we thought it ought to be territory that would earn a good profit on our investment.

Q. Had you any other view than to make your investment in the construction of street railroads to meet the public wants for transportation?

A. No, sir; we had not.

Q. Had you any purpose in view as to injuring the Citizens' Street Railway Company?

A. No, sir.

Q. Was it any part of the intention of yourself or your associates to select streets or routes that would be most injurious to the Citizens' street railway line?

A. It was not, no, sir.

Q. Had you any other purpose than to organize your company and construct the streets in such a manner as to meet public needs of transportation and to make profit out of them?

A. That was our intention.

Q. Had you any further intention?

A. No, sir.

147 Q. Are you a stockholder in the Citizens' Street Railway Company?

A. I am.

Q. To what extent are you and your associates who are engaged in the construction of the Detroit railway stockholders in the Citizens' Street Railway Company?

A. I do not know whether we own 8 per cent. or 10 per cent. of the capital, we have $100,000, par, of their stock.

Q. Were you such owners at the time you organized the Detroit railway?

A. Yes, sir.

Q. Were you such owners before you laid out the plan and systems of line of the Detroit railway?

A. Yes, sir.

Q. Do the lines of the Detroit railway parallel the lines of the Citizens' street railway?

A. Well, I do not think that they can be said to parallel them; of course this one right up Oakland might be considered as paralleling; I do not think there are any other that could be considered so.

Q. How far is that away from the Citizens' line?

A. About half a mile.

Redirect examination:

Q. In laying out the Detroit railway lines have you not occupied territory that is naturally tributary to the present line of the Detroit Citizens' Railway Co.?

A. Only in the instance I have mentioned.

Q. You go in a zigzag sort of way between all these main streets?

A. Only for our straight outlet. On Fourteenth avenue, of course, we had to go on streets we found unoccupied.

148 Q. The Citizens' Co. has lines running out Michigan, Grand River, Woodward and Gratiot avenues, and you have undertaken to occupy the territory between these streets?

A. Yes, sir, we are not paralleling them.

Q. You are not paralleling them because there are no parallel streets, but you do the next best thing, you cover all that territory?

A. I think in laying out our route any man looking over the map would see that they were laid out in a business way; they are expected to cover territory never covered before. Our Warren Avenue line, there was territory where they had no street-car facilities. The Oakland and Mt. Elliott territory had no facilities.

Q. The Citizens' Co. have the same lines, take the Myrtle Street line that comes into Grand River and comes down Grand River, would it not be better for the accommodation of the public that your line would come into Michigan or Grand River or Gratiot and reach the river and ferry in that way?

A. No, sir, it would not.

Q. The public would not be better served?

A. No, sir.

Q. You want to come further downtown before you come in?

A. Not of necessity, but in occupying these streets and giving facilities to their door it is to the public's advantage. In Cleveland there are several streets running parallel, and a railway on every one built by different companies.

Q. You think after you have built in unoccupied territory like that and brought the traffic to one of the main streets, it is more convenient and better for the public to leave that street and come down in a zigzag way?

149 A. Of course I do not agree with you on the zigzag; I think if you take the maps laid out you will not think they are zigzag as you say.

Q. At all events, you have endeavored to occupy the territory between the main streets?

A. The unoccupied territory.

Recross-examination:

Q. Was the bill, to which your attention was called by Mr. Baker, introduced in the legislature referred for consideration to a committee of the house of representatives?

A. I cannot tell you.

Q. Were you not present at a hearing before a committee of the house of representatives on that bill?

A. Yes, sir, I was present at two different times of consideration.

Q. I call your attention to the first hearing before the committee, you were there?

A. Yes, sir.

Q. Mr. Albert Pack and Mr. Corliss represented the Detroit railway, did they not?

A. Yes, sir, and yourself.

Q. Do you remember Thomas L. Johnson being there representing the Detroit Citizens' railway?

A. Yes, sir.

Q. And Mr. John C. Donnelly?

A. Yes, sir.

Q. Do you remember that in the hearing before that committee Mr. Thomas L. Johnson made the statement that the system laid out for the Detroit railway was one in the interest of the public and was a system of roads which ought to be built?

A. Yes, sir, I do.

150 Q. Did he not say to the committee that he believed that the Detroit railway and the gentlemen who were engaged in its management intended in good faith to construct that system to meet the wants of the public?

A. Yes, sir, he did.

Q. Did he not say that the principle of the bill was right?

A. Yes, sir, he did.

Q. Did he not say that the only objection which he had to make to the passage of the bill was that the track on Woodward avenue would be overcrowded if both companies run their cars over that track?

A. Yes, sir, he did.

Q. Was not that the only objection he made to the passage of the bill?

A. Yes, sir.

Q. What would be the combined trackage in miles of the Detroit Railway Co. and the Citizens' railroad when the Detroit railway system is completed in the city?

A. I think about 125 miles.
Q. What is the population of Cleveland?
A. About 350,000.
Q. Is it considerable more than the population of Detroit?
A. I understand Detroit is about 300,000.
Q. Mr. Thomas L. Johnson is president of the Detroit Citizens' Railway Co.?
A. Yes, sir, I believe so.
Q. Do you know the number of miles of track the Citizens' Street Railway Company has in the city of Detroit?
A. No, sir, I do not; I understand it is about 70 miles within the city.

By Mr. FLOWERS:

Q. Before you laid out your route, had there been any apparent attempt on the part of the Citizens' railway to afford any ac-
151 commodation to any portion of the city except such as was traversed by the main avenues of the city?
A. Not to my knowledge.
Q. State what your position is in the Detroit railway?
A. Vice-president and general manager.
Q. You are engaged in constructing the route?
A. Yes, sir.
Q. How far have you advanced in the construction of your routes?
A. We have about 10 miles of poles already erected and placed on the streets, we have upwards of six miles of street excavated, and we have three miles of rail laid, and we have rail on the ground for ten miles more of track and it is arriving every day.
Q. What other outlays have you made?
A. We have bought everything pertaining to the system, cars, motors, generators for the power-house, we have purchased all the material for our road-bed, we have all the brick purchased for the construction of all our buildings. We had advice this morning that there are ten motors completed, ready to ship at any moment.
Q. What outlay in money have you made, including liability incurred or payments to be made?
A. Over $800,000.
Q. Is that outlay of moneys to be derived from subscription of the stock?
A. Yes, sir.
Q. If not obstructed in your work by the Citizens' Street Railway Co., how soon do you contemplate and intend to complete entirely all your lines?
A. We will have the entire system in the city and also the suburbs completed during the summer; if no unnecessary delay is occasioned, we ought to be ready by the middle of August with almost the entire business, we anticipate running some cars by the 4th of July.

152 Recross-examination:

Q. Who drafted this bill originally for you, the bill as it was first introduced?
A. The first memorandum draft was made by Judge Tuttle.
Q. And subsequently revised by who?
A. Mr. Corliss drew that bill and Mr. Hanchett revised it.
Q. All three counsel for your company?
A. Yes, sir.

Bill marked Exhibit "A" and offered in evidence.

(Signed) HENRY A. EVERETT.

Subscribed and sworn to before me this 9th day of December, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne Co., Mich.

HENRY D. LUDDEN, sworn for plaintiff:

Q. What is your business?
A. Acting city engineer.
Q. How long have you been city engineer?
A. Fourteen years I think, altogether.
Q. You do the engineering and surveying for the city?
A. Yes, sir.
Q. Do you know the widths of the different streets and pavements of the different streets?
A. Yes, sir.
Q. Do you know how wide Fourteenth avenue is?
A. Eighty feet.
Q. Is it a paved street?
A. Yes, sir.
Q. How wide is it paved?
A. Thirty feet.
Q. How wide is Bagg street?
153 A. Bagg street is different widths, west of Cass avenue. There is one place where it is 40 feet wide, from Grand River to Fourth, 50 feet west of Grand River, and 60 feet from Fourth to Third, and from Third to Cass 100 feet.
Q. How wide is it paved?
A. Different widths, paved 26 feet, 24 feet and 30 feet, 24 between Grand River and Fourth, 26 west of Grand River, and some portions 30 feet.
Q. How wide is Clifford street?
A. Sixty feet.
Q. How wide paved?
A. Twenty-eight feet.
Q. How wide is Locust street?
A. Fifty feet.
Q. How wide paved?
A. Twenty-six feet.

Q. How wide is Henry street?
A. Portion of it 100 feet, across Cass farm.
Q. How wide paved?
A. It is paved different widths, 24 and 30, 24 the narrowest.
Q. How wide is Henry street east of Clifford street?
A. It is 60 feet.
Q. East of Cass, I guess it is.
A. Where it crosses Woodward, 60 feet.
Q. How wide paved there?
A. Thirty feet.
Q. How wide is Griswold street from Clifford to State?
A. Sixty feet.
Q. How wide is it paved?
A. It is paved 34 feet from Grand River to State, and 30 feet from State to Clifford.
Q. How wide is Miami avenue?
A. One hundred and twenty feet wide.
Q. How wide paved?
154 A. Forty feet.
Q. How wide is Witherell street?
A. Sixty feet.
Q. How wide paved?
A. Thirty feet.
Q. How wide is Adams avenue?
A. Sixty feet.
Q. How wide paved?
A. Thirty feet.
Q. How wide is Beaubien street?
A. Well, Beaubien street is 40, 50 and 60 feet, three different widths.
Q. How wide paved?
A. Twenty-four feet.
Q. The whole distance?
A. As far as it is paved, up to Canfield.
Q. Hastings street, how wide?
A. Fifty feet.
Q. How wide paved?
A. Twenty-eight from Adams north, 30 south.
Q. How wide is Custer avenue?
A. Sixty feet.
Q. How wide paved?
Mr. CORLISS: Our track is not on there now, it runs from Hamlin.
Q. How wide is Hamlin?
A. Sixty feet.
Q. Is it paved?
A. To Oakland.
Q. How wide?
A. Twenty-six feet.
Q. How wide is Oakland avenue?
A. Sixty-six feet.

Q. Any pavement?
A. Yes, sir. I want to change my testimony in regard to Hamlin. If I remember, it is not paved.
155 Q. How wide is Harper avenue?
A. Eighty feet.
Q. How wide paved?
A. I will have to pass that, I guess.
Q. You don't remember?
A. No, sir.
Q. How wide is Field avenue?
A. Sixty-six feet, paved 30.
Q. How wide is Mt. Elliott?
A. Sixty-six feet, paved 30.
Q. How wide is Kercheval avenue?
A. Eighty feet.
Q. Paved?
A. Unpaved.
Q. Concord avenue?
A. Sixty-six feet, paved 26.
Q. How wide is Jefferson east of Concord?
A. One hundred and twenty feet wide.
Q. How wide paved?
A. Sixty at that point.
Q. How wide is Sherman?
A. Fifty feet.
Q. Paved?
A. Twenty-six feet.
Q. Joseph Campau avenue?
A. Sixty-nine feet and a fraction.
Q. Paved how wide?
A. Thirty feet.
Q. How wide is Catherine?
A. Fifty feet.
Q. The pavement?
A. Twenty-six feet.
Q. How wide is Waterloo?
A. Fifty feet.
156 Q. Paved?
A. Twenty-six feet.
Q. How wide is Hendricks?
A. Fifty feet, unpaved.
Q. How wide is Vinewood?
A. Sixty-six feet.
Q. Paved?
—. ——.
Q. How wide is Scotten avenue?
A. Sixty-six feet.
Q. Paved?
A. Portion of it paved, 26 feet.
Q. How wide is Porter?

A. I am not positive whether 50 or 60 feet, between what points?

Q. West of Twenty-first street.

A. I think 50 feet, unpaved.

Q. How wide is Twenty-fourth street from Porter to the river?

A. Fifty feet.

Q. Paved?

A. Yes, sir, from Porter to the River street, from Fort to River street.

Q. How wide is Woodward avenue?

A. One hundred and twenty feet south of Adams.

Q. How wide paved?

A. Eighty feet to Grand Circus park, 76 from Grand Circus to Adams.

Cross-examination:

Q. Width of the pavement 80 feet?

A. From the river to Adams, to Grand Circus it narrows up to.

Q. What north of that?

A. It narrows up to High, paved 90 feet at Adams and narrows up to 50 at High. From there way on the same.

157 Q. I should judge from your answers that you are familiar with the streets to which your attention has been called?

A. Yes, sir.

Q. And know to what extent they are built up and occupied for residence purposes?

A. Yes, sir, pretty well.

Q. In your judgment does the Citizens' Street Railway Company's lines furnish the people of these streets sufficient accommodation for street-car transportation?

A. No, sir; a large section of the city they do not accommodate.

Q. That accommodation will be supplied by the construction of the Detroit railway line?

A. Yes, sir, the principal lines of streets are equipped, but, of course, the territory between these streets are not accommodated.

Q. The principal lines are the Citizens' Company's?

A. Yes, sir.

Q. In your judgment are the lines laid out for the plan of the Detroit railway to any extent unnecessary?

A. No, sir, I think not; I think a cross-town line very necessary for the upper portion of the city.

Cross-examination.

By Mr. CORLISS:

Q. You say the cross-town line in your judgment is very necessary; what have you to say with reference to the Fourteenth Avenue line, the Mt. Elliott Avenue line?

A. Well, of course the Citizens' railway have a line up Trumbull and that is necessary, and it is quite a distance from Trumbull to Fourteenth.

Q. What is the distance?

A. I don't remember, four or five blocks, it must be 1,500 feet.

158 Q. How about Mt. Elliott running from the city limits southerly; is there any accommodation there to the public whereby they could reach Belle Isle?

A. No, sir.

Q. So that from your knowledge of the city you state in your judgment, for the accommodation of the people, do you think the line so essential?

A. Yes, sir.

Q. You are familiar with the tracks and the pavements of the streets equipped by the Detroit Citizens' Company?

A. Yes, sir.

Q. They have a double track on Gratiot avenue?

A. Yes, sir.

Q. What is the width of that street?

A. Paved 46 feet.

Q. How much do the two tracks occupy?

A. Fifteen feet.

Q. What width is Michigan avenue paved?

A. Sixty-six feet up to Sixth street and then narrows up to 46.

Q. The Cass Avenue line running from or to Cass, Ledyard and Third, what is the width of the pavements on these streets?

A. Ledyard 36, Cass 35, that is, Cass north of Grand River, and Third street is 32.

Q. What is the width of the street proper?

A. Third 70, Ledyard 100 and Cass 80, that is, north of Grand River, Cass is narrower south of Grand River.

Q. What is the pavement south?

A. Thirty-two.

Q. What is the width of the street on State street?

A. Sixty feet.

Q. What is the pavement?

A. It is 30 feet wide.

159 Q. Take Champlain street from Mt. Elliott east to Helen avenue, what is the width of the street?

A. The street itself, that portion of it is 66 feet.

Q. Is it paved?

A. Yes, sir.

Q. How wide?

A. Paved 30 feet.

Q. That is occupied by a double track?

A. Yes, sir.

Q. How long has that been in operation there?

A. About three years, I think.

Q. With double track?

A. Yes, sir.

Q. That is electrically equipped?

A. Yes, sir, it is now.

Q. What is the width of Congress street east from Woodward avenue and Fort street?

A. Congress street is 60 feet wide and the pavement 30.
Q. That has a track of the Citizens' Company on?
A. Yes, sir.
Q. Fort street east, too?
A. Yes, sir.
Q. What is the width of that street?
A. Fifty-foot street; I don't recollect the pavement.
Q. What is the best of your recollection?
A. I should put it 28 feet as a compromise.
Q. The Citizens' tracks on that?
A. Yes, sir, track on that.
Q. Randolph street from Cadillac square to Monroe avenue?
A. The street 60 feet.
Q. Paved how wide?
A. The pavement is 40 feet.
Q. Monroe avenue running from Randolph east?
160 A. Yes, sir, 120 feet wide.
Q. From Randolph street east?
A. Fifty feet wide.
Q. What is the pavement?
A. Thirty feet.
Q. That has a track upon it?
A. Yes, sir.
Q. Electrically equipped?
A. Yes, sir.
Q. Champlain from Randolph to Mt. Elliott?
A. Fifty feet.
Q. How wide pavement?
A. I think it is 26 feet.
Q. That has a track with electric cars on it?
A. Yes, sir, has been for a number of years.
Q. Three or four years?
A. Yes, sir.
Q. Crawford Street line from Grand River north, how wide is that street?
A. It is 40 from Grand River to Brigham and 50 north.
Q. Paved?
A. Yes, sir.
Q. How wide?
A. Twenty-six feet.
Q. Citizens' Company have a track out that street?
A. Yes, sir.
Q. The Baker street?
A. Baker street 60 feet wide, paved 32.
Q. Seventh street from Baker south to Congress, how wide?
A. Sixty feet.
Q. Paved?
A. I do not remember the width of that.
Q. It is not 30 feet, is it?
161 A. I should not think it was more than 26 from my recollection.

Q. Congress street from Seventh to Woodward?
A. Sixty feet wide, paved 32.
Q. Citizens' Company's track on that?
A. Yes, sir.
Q. Larned from Griswold to Third?
A. Sixty feet wide, paved 40.
Q. Citizens' track?
A. Yes, sir.
Q. Now Myrtle street, from Grand River west?
A. Fifty feet, paved 30.
Q. That is owned by the Citizens' Company?
A. Yes, sir.
Q. Is that electrically equipped now?
A. No, sir; horse service.
Q. Chene Street line from the river north to Gratiot?
A. That street is 66 feet wide, paved 30 feet.
Q. Citizens' Company have a track on that?
A. Yes, sir.
Q. Mack street?
A. Sixty-six, paved 46.
Q. Been paved that width recently?
A. Yes, sir.
Q. What was the width of the street when the cars were first put on Mack avenue?
A. Always been that width.
Q. How about the pavement?
A. Never any pavement until last year.
Q. Double track?
A. Yes, sir.
Q. Brush street from Gratiot running north equipped by Citizens' track, what is the width there?
A. The street is different widths, I think it is 40 feet a
162 ways north of Gratiot and changed to 60 feet, different widths also.
Q. What is the pavement there as you leave Gratiot?
A. I think it is 26 feet.
Q. There has been a Citizens' track on there for some time?
A. Yes, sir; ten years I should judge.
Q. That line turns onto Antoine which runs through Rowena to Antoine, what is the width in the turn?
A. The street 50 feet wide.
Q. Pavement?
A. About 30.
Q. Third street from Grand river to the Michigan Central depot, what is the width of that street?
A. That is 60 feet wide, paved 32.
Q. Track of the Citizens' Company on that?
A. Yes, sir.
Q. What is the width of Atwater street from Woodward avenue to the Brush Street depot?
A. Fifty feet.

Q. Paved how much?
A. Thirty feet.
Q. That occupied by track?
A. Yes, sir.
Q. Randolph street from Congress to Atwater?
A. That is 60 feet wide.
Q. Paved?
A. I think 40 feet south of Jefferson avenue.
Q. Do you know what it is north?
A. No, I don't remember.
Q. A little less?
A. Yes, sir.
Q. That equipped by a track?
A. Yes, sir.
163 Q. Dix road?
A. Sixty-six feet wide.
Q. Paved?
A. Thirty-three feet.
Q. That equipped by Citizens' Company track?
A. Yes, sir.
Q. And aside from the main avenues, Woodward, Jefferson, Michigan, Gratiot, Grand River, how do the streets equipped by the tracks of the Citizens' Company compare with the width of the streets proposed to be equipped by the Detroit Railway Company?
A. Well, outside the main streets there is no difference, take Myrtle or Brush and Russell and Antoine, they are all narrow streets.
Q. Congress street and Champlain and Monroe east of Randolph?
A. Champlain is Fort Wayne.
Q. What is the width of a single track?
A. Five feet out to out.
Q. Double?
A. Fifteen feet; Citizens' 14 feet 10 inches and the Detroit, I think, are 15.
Q. What width over all does the street car occupy on the street?
A. Single, 5 feet.
Q. Over all?
A. That is from out to out of rail.
Q. I mean the car, out to out of car?
A. Difference in the cars; I believe the new cars will be 2 feet overhang; 8¼ feet.
Q. Eight and a third feet from one side of car to the other?
A. Yes, sir.

(Signed) HENRY D. LUDDEN.

164 Subscribed and sworn to before me this 13th day of November, A. D. 1895.

DAVID E. GREENSTINE,
Circuit Court Commissioner, Wayne County, Mich.

Mr. EMORY WENDELL, sworn:

Q. How long have you lived in Detroit?
A. Since February, 1860, thirty-five years.
Q. Do you know anything about the early street railway history of this city?
A. Yes, sir, something.
Q. How early were you connected with the business?
A. It began at the period of the completion of the road as originally built by the Syracuse parties.
Q. Do you know who built the road when the Detroit city railway first started it?
A. Yes, sir; John J. Belden, Syracuse; Thos. L. Davies, lawyer; Frank Hiscock and his brother L. Harris Hiscock, and a man by the name of Samuel Randall, of Homer, N. Y.
Q. Did they furnish the money to build the road?
A. Yes, sir.
Q. Were any Detroit people interested in it?
A. I think only one party, Eber N. Wilcox; I think he had $17,000 of the $100,000 stock.
Q. What was the nature of the enterprise the first few years?

Objected to as immaterial.

A. It was disastrous to us who bought the road. Those who built it could answer intelligently.
Q. What did they do with it?
A. We bought the road for $200,000.
Q. Who did?
A. I acted for a syndicate of three; R. N. Rice, at that time
165 general superintendent of the Michigan Central Railroad Company, and Charles Fargo, of the American Express Company.
Q. Who else?
A. Nobody.
Q. How long did you operate it?
A. I cannot remember that.
Q. A number of years?
A. No, I guess not much over a year; it had an indebtedness, a twenty-year bonded indebtedness of $100,000 at 8 per cent. and $100,000 stock; we never knew how much it cost them; we bought the stock at par.
Q. What became of the road?
A. It got so that it almost ceased operating and I sold out; I was treasurer for a year or more and then it was leased to George Hendrie; he was induced to come to the rescue and prevent the tracks from being taken up and abandoned.
Q. About when was that?
A. About in 1865, I think, about the end of the war; during the end of 1864, we paid $40 a ton for hay and 70 cents for oats and the stockholders, I guess, never got anything.
Q. Did you have anything to do with the negotiating the original ordinance?

A. I remember at that time there had been an ordinance granted H. K. Sanger and others and they never complied with it and it was rescinded; I had no knowledge of that and I went in to see Mr. Sanger about organizing a company, I thought it would be a good scheme and he laughed at me and went and got a pamphlet which was this charter and he said we had a charter, but had no money and competent workers——

Mr. HANCHETT: I object to this testimony as incompetent.

166 Mr. BAKER: We do not care about any hearsay testimony. We want to know what you know about the enterprise, the early history.

A. It was like this—these parties built it and just as they were completing the Woodward avenue line to Brady street I entered into negotiations or arrangements with Rice and Fargo to buy it and I negotiated with the parties and they, Rice and Fargo, were not known in it until we come to an agreement; they afterward sold out and I sold out.

Q. Was the mortgage foreclosed?

A. No, sir.

Q. What sort of an enterprise was it when Hendrie took hold of it?

Objected to as immaterial.

A. Practically abandoned.

Q. That is, financially it was not a success; that is what you mean?

A. We lost all the money that we put into it, the bonds were paid when they matured.

Q. Did Mr. Rice and Mr. Fargo lose their investments?

A. They had sold in the meantime, we three bought it and divided the stock into three parts.

Q. Any citizens here become interested?

A. Some, I think. Mr. Lothrop took $10,000, and Mr. Duffield took some and a friend of Mr. Duffield's took some, a friend of Mr. Duffield's in New York, and Fargo and Rice sold some to Mr. Godfrey and Mr. Dean.

Q. Was that purchase of bonds or stock?

A. Stock.

Q. What became of the stock as an investment?

A. It was nearly wiped out, I think.

Q. Lost?

A. I think so, I had sold mine so I do not know, but that is my impression.

167 Q. Do you remember when the Fort Street road was built?

A. I could not without some reference fix the year.

Q. About when, you remember the fact that the Fort Street road was built?

A. Yes, sir; it must have been during my connection with the company because there are other reasons I know——

Q. Do you know what the fact is with regard to the Fort Street road obtaining a release from the Detroit city railway?

Objected to as incompetent. If anything of that kind existed it must be shown.

Q. Did you have anything to do with the Fort Street road?

A. I had nothing to do with its construction; I was applied to by some parties who wanted to build it and who were told that the company I represented had a right to build it.

Mr. HANCHETT: I object to that testimony as incompetent.

A. I was asked if we intended to build it and I said No we did not have money to take care of our own road and we did not want to build it.

Q. Then legal steps were taken—you know application was made to your company?

A. Application was made to me personally, I do not know whether any formal application was made to the company, it is vaguely in my mind; we had a right to build and they could not build without consent.

Objected to as incompetent.

Q. What did you tell him?

A. That we did not want to build, that we could not take care of our own road.

168 Cross-examination:

Q. As I understand you, you had nothing to do with the original scheme of organizing the city railway?

A. Nothing whatever.

Q. You first became connected with it when you entered into the purchase of the road after its completion?

A. Practically near its completion.

Q. When you say certain gentlemen furnished money for constructing the road, you have no personal knowledge on that subject?

A. Of how much it cost?

Q. Of their furnishing money.

A. The road came to us paid for except under those bonds.

Q. That is what you know about it?

A. Yes, sir.

Q. How much they put into it or how they raised the money, you know nothing of that?

A. Beyond the existence of the bonds.

Q. Yes, sir?

A. No, sir; I never did know.

Q. At what time did you and your associates, Fargo and Rice, make the purchase?

A. It must have been in the spring of 1864, I have no record, I had a memorandum somewhere showing what year; I think it was 1864.

Q. During the period of the war?
A. Yes, sir.
Q. Your purchase was simply purchase of stock in the road?
A. Yes, sir, and when they came to deliver the stock under our contract Mr. Hiscock demanded that we also must take $52,000 of the bonds for himself personally.

169 Q. Your purchase consisted in buying stock of the company and $52,000 of the bonds?

Q When you speak of selling you mean you sold simply the stock?
A. Yes, sir.
Q. How long did you hold your stock before you sold it?
A. Less than a year, I think.
Q. Then when you speak of the inability to operate the company profitably it had reference to the period of time during which you held your stock, did it not?
A. I do not know how I can answer that without reference to the books.
Q. Did you remain connected with the company after selling out your stock?
A. I remained treasurer during the year and kept the deposit in the bank.
Q. Then it is limited to the period of that one year?
A. I think so, as far as I can recollect.
Q. After you sold out and ceased to keep accounts of the company, had you any further connection with the road?
A. No, sir.
Q. Do you know at what time Mr. Lothrop bought his stock?
A. Out of this purchase of $83,000, between Fargo, Rice and myself that amount was allotted to him.
Q. Ten thousand dollars?
A. Yes, sir.
Q. How long did he hold stock?
A. I never knew; I think he kept it until it faded.
Q. Did he afterwards sell?
A. I do not know.

Q. You do not know what Mr. Lothrop got for his stock?

170 A. No, sir, I do not. That is a sore subject; I never asked much about it.

Q. Who else besides Mr. Lothrop bought in?
A. I do not know the division except in a general way. Rice and Fargo subdivided theirs and I think Mr. Lothrop's came from the entire purchase and then Rice and Fargo they began to sell out, at 125 I think they sold it for to Mr. Dean and Godfrey and others, I never knew who.
Q. Do you know what these gentlemen finally realized on their stock; have you any personal knowledge?
A. No, sir.
Q. Then aside from the sale of the stock you held yourself you do not know what the final outcome of the investment was to these other parties?

A. Not absolutely, I think they lost.
Q. Have you any personal knowledge?
A. No, sir.
Q. When did you sell your stock?
A. I think within six months after the purchase.
Q. That would be during the year 1864?
A. During the year that I was treasurer.
Q. To whom did you sell?
A. I cannot recollect.
Q. Then you do not know what was the final outcome of this stock?
A. No, sir.
Q. I am speaking of the men to whom you sold; you do not remember the names of these men?
A. No, sir.
Q. Then you do not know of your own personal knowledge what the outcome of the stock was to them?
A. No, sir; I made a profit on my sale; I think I realized
171 a profit; there was a great demand for it and no trouble selling it; we thought it was going to be profitable.
Q. The period of time that you was connected with the road was a period of a year of very high prices?
A. Yes, sir.
Q. It was expensive operating the road?
A. Yes, sir.
Q. And times in the city here were dull, were they not?
A. During the war there was a great demand on the part of the Government for horses, made horses very expensive, the demand for soldiers made men very scarce, and demand for hay made it high; I think we paid $10 a ton for hay and 70 cents for oats.
Q. The whole business of street railroading then was a new and untried business?
A. It was then, here.
Q. And you and the gentlemen connected with you had no previous experience in that kind of business at all?
A. None, whatever.
Q. Now, do you mean to say that any application was made within your personal knowledge to the street railway company to release its right on Fort street?
A. Yes, sir.
Q. What do you know about that; was it an application in writing?
A. I cannot recollect it, it is so long ago.
Q. I am only asking what you know.
A. I only remember this: I think K. C. Barker was at that time building his new house on Fort street Mr. Lothrop occupies now.
Q. Was it made in writing?
A. I cannot remember that; I remember the fact of some one coming to me to know if we would relinquish or intended to build.
172 Q. What year was that in?
A. It would be during 1864 or 1865.

Q. Was any application that you know anything about personally except such a one as is made to you, made?
A. I do not know.
Q. Do you know who made it?
A. I cannot recollect it.
Q. Do you know whether it was made in writing?
A. I cannot say.
Q. Did any one make any answer to that application so far as you have personal knowledge except yourself?
A. That I cannot answer.
Q. Was your own answer anything more than you have stated, that you did not want to build it?
A. That is as far as I was concerned; that was my answer that we did not intend to build it; I just remember vaguely some one who wanted to build the road on that street; they could not do it without our permission and they came to me, and if they got it I probably referred them to the board of directors, as I had no power to grant it or refuse it.
Q. That had reference to Fort street west of Woodward avenue?
A. Yes, sir; I would not say that, I think it went right straight through, it was the Fort Street road.
Q. It was the part of Fort street which was named in your original ordinance?
A. It must have been.

EMORY WENDELL.

(S'g'd)

Subscribed and sworn to before me this 13th day of November, A. D. 1895.

DAVID E. GREENSTINE,
Circuit Court Commissioner, Wayne County, Mich.

173 Mr. FRED. CARLISLE, sworn for plaintiff:

Q. Where do you live?
A. Detroit.
Q. How long have you lived here?
A. Thirty-two years.
Q. Do you know anything about the early history of the street railway of Detroit?
A. Somewhat.
Q. Do you know when the first grant was made in the spring of '62, to Mr. Sanger and others?
A. I have a recollection of that.
Q. Do you know why that grant was not accepted?

Objected to as immaterial.

A. From lack of money.
Q. What do you know about that?
A. I know that we attempted to organize a company for the purpose of building one and failed in getting sufficient subscriptions.
Q. Then what did you do?

A. I was authorized to go to Syracuse and Rochester and several other places to see what I could do, and I think at that time there had been a sort of an organization effected or corporation formed, that is my recollection, at any rate sufficient to authorize the issuing of bonds, and it was upon that basis that we proposed to get the money to construct the road.

Q. Did you make more than two efforts in Syracuse?

A. All I had anything to do with was twice; I visited Syracuse twice, I think.

Q. Did you succeed in raising money the first time?

A. No, sir; I did not.

Q. Then what occurred?

A. There was some lapse of time before anything was consummated. They granted an ordinance in the spring of '62 and $5,000 was required, but it was not put up.

174 Q. E. B. Hiscock was one of the formers, prime movers and originated it?

A. Yes, sir.

Q. That fell through?

A. My impression is—I think it did not lapse, my impression is that it was the second trip that I made to Syracuse, it still continued up to that time and we utilized it.

Q. Do you know whether you went down in the fall, or when?

A. It was during the summer, between the spring and fall, because the road was not commenced until September.

Q. Was that the first time?

A. No, the summer I went the first time.

Q. Later in the season you went again?

A. I went again, made the second trip.

Q. Do you remember the fact that the ordinance had been passed in May, '62, and that the common council had four proposals to build the road under that?

A. I have no recollection of that.

Q. Can you say whether or not the terms of the grant had been known by the common council when you negotiated with the Syracuse parties, did you have an ordinance or anything?

A. Well, I think I must have had as a basis in the effort I made.

Q. Did the Syracuse people furnish money to build the road?

A. They furnished money, they came on here and constructed the road under the agent that I think they employed.

Q. Do you know whether it was a financial success or not?

Objected to as immaterial.

175 A. Those who are the originators, at least the Syracuse men, made money in selling out and I received a small portion of it, that was within a year, less than a year after it was completed.

Q. What was its success after that?

A. I only judge from, up to 1868, I only judge from what I observed, I had no direct interest in it.

Q. No absolute knowledge?

A. No, sir; except in 1868, stock sold for 50 cents on the dollar.

Q. Now, were you concerned in some other roads that were subsequently built?

A. Yes, sir. I was concerned in the Congress and Baker Street road, then known as the Grand Trunk junction.

Q. Cass avenue road?

A. No, not any interest in it.

Q. Tell us about the Congress and Baker road, the Grand Trunk Junction road, under what circumstances was that built?

A. As an investment, it originated with a few that it would be a good investment, that is, the line was prospected and started and immediately after the organization of the company, the Canada Southern Company had projected and done something toward a new road through Canada from Buffalo here, then we entered into a sort of a contract with them to bring their cars over the Grand Trunk junction to the center of the city.

Q. Ordinary steam railway cars?

A. Yes, sir.

Q. How were you going to haul them?

A. By horses.

A. Within six months after the Canadian Southern went into bankruptcy, that ended that; meanwhile, the Congress Street road had been completed to the city limits on the west and Randolph street on the east.

176 Q. Were you personally concerned in the management of that road?

A. Yes, sir, I held it for four years alone.

Q. What became of the road after?

A. I sold it to representatives——

Objected to as not competent.

Q. What I want to find out is whether it was a financial success or not, or whether it was paying property or not when you had it.

A. It was not.

Objected to as immaterial.

Q. Do you mean to say that you operated it at a loss for over four years?

A. Yes, sir.

Q. Did you build any other road here?

A. No, sir.

Q. Had nothing to do with the Cass Avenue road?

A. No, sir.

Q. Then you expected to make this a success by hauling ordinary railway trains?

A. That was part of the idea.

Q. Mr. Meadow interested with you in it?

A. I believe he was one of the original stockholders, also Newell Avery and Murphy, and Francis Adams, first president of the company.

Q. Do you know whether you secured any right from the Detroit city railway, any release or anything?

A. No, sir, we did not.

Q. Did not ask for any?

A. No, sir.

Q. They did not offer to build it or furnish money or anything of that sort?

A. No, sir.

Q. I suppose you wish that you had not?

A. Possibly I would be better off if I had not undertaken it.

177 Cross-examination:

Q. I understand you, Mr. Carlisle, that the men who built the Detroit city railway originally made money out of the operation?

A. Yes, sir, made money out of the sale of it, not out of operating.

Q. They made their investments here at your solicitation to them to do so?

A. Yes, sir, was a party, one of the parties to induce them to invest.

Q. What street did the Grand Trunk Junction Co. apply for?

A. They applied for Congress from the eastern city limits, then to Seventh street, and Seventh street to Baker and Baker street to the city limits west.

Q. About what time was that?

A. In 1873.

Q. Now, you helped to organize the company?

A. Yes, sir.

Q. Obtained a franchise from the city?

A. Yes, sir.

Q. Did the Detroit City Railway Co. set up any claim of right to these streets at that time, to your knowledge?

A. My impression is that the question was raised in the council, but I am not positive, that is, it may be a portion of their protest against granting the franchise, that is my impression.

Q. I understood your answer to Mr. Baker that they did not object to the construction of the road?

A. Did not aid in the construction.

Q. I understand you to say that you did not apply to them to get consent?

A. We did not.

178 Q. Did they make any objection?

A. They protested against granting a franchise, that is, we met them on the application for franchise.

Q. What objection did they make?

A. As I said before, I think they may have raised that question.

Q. Have you any recollection?

A. No, sir, not distinct recollection, of course we run parallel to the road.

Q. The objection was that you would parallel their road and be a rival company; that is the objection?

A. That is my memory.
Q. Do you know of their filing any written notice?
A. Never any served upon me.
Q. Was there another company, the Congress and Baker Street road?
A. That is the same thing.
Q. You built the road?
A. Yes, sir.
Q. Operated it how long?
A. Four years, that is, I was compelled to take it because I became responsible for its indebtedness.
Q. Did you own the entire stock?
A. Yes, sir; I owned the entire stock; controlled the entire road.
Q. At the end of four years what was done with the stock?
A. I sold out, I think, and realized very little from it.
Q. Do you know to whom the sale was made?
A. The sale was made to a syndicate represented by James McMillan.
Q. Who was associated with him?
A. I think W. K. Muir, George Hendrie, Fred Driggs; these are all I recall now.
Q. Is the same road being operated at this time?
179 A. Yes, sir.
Q. By what company?
A. By the Citizens' Street Railway Company.
Q. Detroit Citizens' Railway Company?
A. Yes, sir.
Q. How long have they been operating that line?
A. I cannot say positively, because I do not know when the transfer was made from the City to the Citizens'.
Q. How long do you think?
A. I should judge three years.
Q. Did it pass into the Detroit City Railway Company's hands before that time?
A. Do you mean Congress and Baker?
Q. Yes, sir.
A. I think it did nominally, if not in reality.
Q. So it was operated by them?
A. It was recognized as part of the City railway.

Cross-examination.

By Mr. CORLISS:

Q. You think when you went to Syracuse to interest these parties there to build this line that the ordinance had not been granted?
A. That is my impression.
Q. Do you remember what streets that ordinance covered?
A. My recollection is Jefferson avenue from the eastern to the western limits and Woodward avenue as far as such limits extended.
Q. Michigan and Gratiot?

A. My impression is they were not included, at least have no recollection.

Q. There was part of Fort street in the original?

A. I think there was, yes, sir; I am not certain.

180 Q. Did you understand that the company had any rights in any streets not specifically named in their ordinance?

A. No, sir.

Q. That was not so understood by the Syracuse people in which they put their money?

A. No, sir.

Q. That they had a right to build upon the streets mentioned in the ordinance only?

A. Yes, sir.

Q. You are familiar with the city of Detroit?

A. Yes, sir.

Q. Are you familiar with the line of the Detroit railway?

A. Not very familiar except in a general way.

Q. Have you had an opportunity to examine the map showing a radius of their lines?

A. Yes, sir.

Q. State whether in your judgment as a railway man the construction of the lines embraced in the Detroit railway franchise is essential for the benefit of the traveling public of this city?

A. I think we cannot have too many street railways.

Q. Do you not think the Scotten and Warren Avenue lines a necessity?

A. Well, I can hardly conceive that they would be absolutely a necessity.

Q. Have you been through that line at all?

A. It would be a great convenience and a great benefit to the public, that line would be between Mt. Elliott and Fourteenth avenue possibly, as a matter of convenience.

Q. You have not given their lines any special attention?

A. No, sir.

Mr. BAKER: Counsel for the plaintiff offers in evidence
181 an ordinance of the common council of the city of Detroit, approved May 24th, 1862, copy of which is hereto annexed as Exhibit "B," page 55 of the Journal of the Common Council for 1862.

Mr. HANCHETT: I object to the offer made as not competent or relevant under the bill of complaint and second that what the counsel offers is something from a printed book and is not the original ordinance.

Mr. BAKER: Counsel for plaintiff next offers in evidence resolution *to* the common council of the city of Detroit, adopted the 26th of August, 1862, as shown by the official and also by the printed proceedings of the common council, a copy of which resolution is hereto annexed as Exhibit "C," page 110 of the Common Council Proceedings for 1862.

Mr. HANCHETT: I object to that as immaterial and irrelevant under the pleadings in this case.

Mr. BAKER: I next offer in evidence a notice published by the comptroller of the city of Detroit in pursuance of the foregoing resolutions, a copy of which notice, as it appears in the printed Journal of the Common Council of the City of Detroit for the Year 1862, page 131, and which is hereto annexed as Exhibit "D," notice dated the 29th of August, 1862.

Mr. HANCHETT: I object to it as immaterial and irrelevant.

Mr. BAKER: I next offer in evidence a report of the comptroller of the city of Detroit, to the common council of the city, dated September 30th, 1862, as found in the journal of the common council of that date, a copy of which report is hereto annexed as Exhibit "E," page 125, of the journal.

FRED'K CARLISLE.

182 Subscribed and sworn to before me this 13th day of November, A. D. 1895.

DAVID E. GREENSTINE,
Circuit Court Commissioner, Wayne County, Mich.

Mr. FORSTER, recalled:

Q. Did you hunt for the original ordinance of May 24th, 1862?
A. Yes, sir.
Q. Did you succeed in finding it?
A. Yes, sir.
Q. Is that it?
A. Yes, sir.

City clerk also produced journal of common council of 1862, the original of printed copy used in examination.

CHARLES R. FORSTER.

Subscribed and sworn to before me this 11th day of December, 1895.

D. A. STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

Mr. SIDNEY D. MILLER, sworn:

Q. How long have you resided in the city of Detroit?
A. Forty-three years.
Q. Were you connected with the old Detroit street railway at any time?
A. Yes, sir.
Q. Occupy and official position in that company?
A. I was director.
Q. And one time president of the company?
A. Yes, sir.
Q. You ever have your attention called to the provision of sec. 2 of the ordinance of 1862, giving that railroad company the preferred option to build new lines and extensions?

183 A. I did.
Q. About how early were you connected with the road?

A. I should have to look back; my recollection is that it commenced in 1873, that is my recollection, but it is not reliable.

Q. Were you somewhat important with its affairs through your friends before that?

A. Yes, sir; I watched its progress from the time it first began on Jefferson where they built the first line, they had sought to establish an omnibus line to carry the passengers——

Q. Can you tell us during your knowledge of the road what has been its attitude in regard to the provisions of sec. 2, giving it the first option or first right to build new roads?

Objected to as incompetent.

Q. With reference to insisting upon the right or relinquishing it?

Objected to as incompetent and that the witness does not show that he has any knowledge on the subject.

A. I had connection with the directors as president and the attitude and position of the management of the corporation was that we had the first right to build any lines that the city might require.

Q. Did you have occasion at any time to state your position in that respect to the common council?

Objected to as not competent.

A. I did, I wrote a communication to the council at that time.

Q. Have you a copy of that communication?

A. I believe I have; I have a pamphlet which I put together some years ago which contains, I believe, a copy of it; I have not compared it with the official record.

Mr. HANCHETT: I suppose it was compared at the time it was filed?

184 A. I think it was. I have no question but what it is a correct copy.

Q. Will you please read the communication to the common council?

Objected to as incompetent and immaterial.

A. On the 11th of November, 1876, I, as president of the Detroit city railway, addressed this communication to the common council:

"To the honorable body, common council, city of Detroit.

GENTLEMEN: I am instructed by the board of directors of the City Railway Co., with a view to preserving the rights and remedies, to represent to your honorable body that under the contract of said corporation with the city, the exclusive option to construct and operate street railways in the city is vested in said corporation whenever new routes, in addition to those specifically designated in said contract, are ordered by the common council. And, also, that if under any action of the council it is intended to order any such new routes said corporation will be prepared to act under the terms

of said contract whenever your honorable body shall extend the opportunity.

Very respectfully,

(Signed) SIDNEY D. MILLER,
President Detroit City Railway."

Q. Mr. D. C. Holbrook was city counselor—I show you page 630 of the Journal of the Common Council for 1876; on that page, does that page contain a report of the committee and city counselor on that communication?

Mr. HANCHETT: I object to that question as incompetent. That is more a question of identity.

A. I believe this is the report of the committee and city counselor made at that time.

185 Q. Is that one of the public journals of the common council of this city?

A. It looks like it.

Q. I believe this is the report of the committee and city counselor made at that time. Is that one of the published journals of the common council of this city?

A. It looks like it.

Mr. BAKER: I offer a report of that committee in evidence as Exhibit "F," page 630.

I now offer in evidence page 646, extract from the Journal, under head of unfinished business, Exhibit "G."

I also offer in evidence an extract from the same Journal, page 650, 1876, communication from the Central Market, Cass Avenue & Third Street railway, as Exhibit "H."

Also an extract from page 663 of the same Journal, under date of January 5th, 1877, relative to an ordinance authorizing the Central Market and Cass Avenue and Third Street to construct and operate its railroad, showing the adoption of the ordinance, as Exhibit "I."

I next offer in evidence extract to be found on page 12 of the Journal of the Common Council for 1877, the extract being a veto from the mayor, as Exhibit "J."

I also offer Journal of the Common Council for 1877, on page 14, resolution introduced by Alderman Dunlap, as Exhibit "K."

I offer page 15 under date of January 15th, 1877, action of the council adopting the resolution, Exhibit "L."

Mr. HANCHETT: I object to these exhibits on the ground of incompetency.

Q. You were a resident of Detroit when the old Detroit city railway commenced to construct a railway in the city?

A. Yes, sir.

Q. Do you know who built the road, who the gentlemen were who furnished the money?

186 A. Well, I do not know them personally; I recollect seeing them here; I think Mr. Hiscock, there were three, Hiscock, Belden and somebody else, Meyers, I think; they were here together.

Q. Did the road subsequently pass into the hands of some Detroit people?

A. The stock was subsequently bought by Lothrop, and R. N. Rice and Joe Godfrey and Bethune Duffield.

Q. Did they operate the road?

A. Yes, sir.

Q. Do you know whether or not it was successfully operated from a financial standpoint while they had it?

Objected to as immaterial and incompetent.

A. I was not interested and had no right to look at their records, I only know that Mr. Lothrop was very anxious to be relieved.

Q. Of course, you have no personal knowledge of their receipts and disbursements?

A. No, sir.

Q. What did they do with it, the road?

Objected to as immaterial.

A. They made a lease of it, Mr. Lothrop was the president of the company at the time; they made a lease of it to Mr. George Hendrie.

Q. Do you know in a general way whether that lease was made because of the financial embarrassment the road was in or some other purpose?

Objected to as immaterial and that the testimony is apparently mere hearsay that is called for.

A. I cannot tell; I only know that they were glad to make the lease upon a low basis.

Q. You know it was leased?

A. Yes, sir.

Q. And it was in possession of Hendrie for some years?

187 A. Yes, sir.

Q. And subsequently did Hendrie, yourself and friends acquire control of the road?

A. Subsequently, after the expiration of the lease my recollection is that the majority of the stock was purchased, Mr. Hendrie and others succeeded, myself among the number. It was a matter of compulsion on the part of Mr. Hendrie to take it.

Q. What I want to get at is whether the road was in a flourishing financial condition or not; what was the condition under which the road was acquired?

Objected to as immaterial.

Q. If you know?

A. I know generally under the terms of the lease Mr. Hendrie was entitled——

Mr. HANCHETT: I object to the witness stating the contents of the lease as incompetent.

Q. We do not care particularly about the contents of the lease, we would like to know situation of the indebtedness.

A. Quite badly in debt——

Objected to as incompetent.

Q. Do you know that to be a fact?
A. Yes, sir.
Q. Largely in debt?
A. Yes, sir.

Mr. HANCHETT: I object to the condition of the company. It is best shown by the records of the company and the books of accounts. The testimony tendered is incompetent.

Q. What was done to pay Mr. Hendrie, or how was it adjusted?

Objected to as immaterial.

A. My recollection is that I sued the company, I will not
188 be certain, and got judgment for a considerable sum, and they could not pay, and Mr. Hendrie then began to buy up the stock.

Q. To protect himself?
A. To protect his investment in the property.
Q. What was the fact, whether it was flourishing or went into financial embarrassment during these years?

Objected to as immaterial.

A. The corporation certainly was not in good condition at the time.

Cross-examination:

Q. When did you become connected with the Detroit City Railway Company either as a director or as president?
A. My recollection, as I said, is that it was somewhere about 1873.
Q. I understand you to say that you became a stockholder about 1873?
A. I think I became connected with it as director about that time. My attention has not been called to the exact date, but my recollection is that I became connected with it as director the same time as stockholder.
Q. When did you become president?
A. Some time prior to '76.
Q. How long did you remain president?
A. A good many years, I do not know, I could only answer that by referring to the records.
Q. What was the capital stock of the company at the time you became director?
A. Nominally the capital, the original capital I think was $100,000, the original capital stock under the association, articles of association, was $100,000, that capital was increased during the administration of Mr. Lothrop, while he was president $10,000 was added—no, $120,000 was the capital stock in 1867.

189 Q. What was its capital in 1873, or at the time that you bought it?

A. That, I think, was $120,000.

Q. Did you buy in while Mr. Hendrie was operating the road under lien?

A. I think so.

Q. Do you know?

A. My attention has not been called to it these 18 years, I think.

A. I think it was pending the lease that I became interested in this stock.

Q. Was it after you had brought suit against the Detroit City Railway Company that you bought in?

A. I cannot answer that, I do not know actually that I sued; I know I had claim for adjustment between him and the company, but I do not know whether it actually came to suit or was adjusted without.

Q. Then you do not know whether you recovered any judgment or not?

A. I do not; I said so before.

Q. Do you know how many years the road was operated by Mr. Henrie under the lease?

A. I cannot answer that question without investigation.

Q. Had you anything to do with the road during the time that he was operating it under the lease?

A. I had, I think.

Q. What?

A. Not as stockholder until long after the lease was made; I was not a director.

Q. If you were not a director and stockholder, what was your connection with the road?

A. Attorney for Mr. Hendrie.

190 Q. That is, you were attorney for Mr. Hendrie personally?

A. Yes, sir.

Q. Did Mr. Hendrie continue to operate the road under his lease until he purchased the stock?

A. That is my present impression.

Q. Did you buy into the stock at the same time that he made his purchase of the stock?

A. Somewhere about the same time.

Q. How long did Mr. Hendrie continue to hold the stock purchased by him?

A. I do not know but he holds it yet.

Q. How long after that date did he continue to be the controlling force in the management of the road?

A. Well, he alone never had the majority of the stock and he would not be the controlling force without the majority of the stock. He was manager of the road a good many years.

Q. I mean by the controlling force the control exercised by him and the gentlemen who were associated with him.

A. They controlled the stock of the company all the time until

the stock was exchanged, I think, for stock of the street railway company which became a new company in its place.

Q. Down to 1890?

A. I cannot give the date.

Q. About 1890?

A. It was somewhere in that period.

Q. During that period of time, and I mean by that down to the time that you say that the property was transferred to the Detroit Street Railway Company, to what extent had the stock of the Detroit City Railway Company been increased?

191 A. I cannot give the amount it was increased. My present recollection is—I would not be absolute in the statement—that the only change that was made in the stock was in 1877, when it was increased; the stock was then declared to be $500,000.

Q. I understand you that is the only increase you know of?

A. That is the only one I recollect.

Q. Was the increased stock all issued?

A. That I cannot answer.

Q. Was it sold on the market?

A. That I cannot answer without going back to the records.

Q. Was the increased stock paid in dividends to the stockholders?

A. That I cannot answer; it is impossible for me at this length of time to recollect the facts with reference to it.

Q. Then when you speak in regard to the finance of the company you are not very well posted on the subject?

A. I am pretty well posted as regards the facts I have stated; wherever I have given a statement it is reliable.

Q. It is a little difficult for me to see how a gentleman can say the finances were not in good condition when he cannot say what disposition was made of the increase of stock, whether it was disposed of in dividends or sold on the market.

A. Permit me to state the facts as I recollect them. As I say my attention has not been called to this.

Q. When did you part with the stock you bought in 1873?

A. I say I bought the stock as early as that, I think I did. I think I continued to hold that stock until it was exchanged for the stock of the Detroit Street Railway Company.

Q. How much stock did you first purchase?

192 A. I cannot answer that question; a small amount.

Q. How much stock did you hold at the time you exchanged it for stock in the Detroit street railway?

A. I cannot answer that without looking it up.

Q. What did you pay for your stock as early as 1873?

A. I would have to go into calculations which would be amusing; I cannot tell how I became interested in the stock.

Q. What did you realize for the stock when you parted with it?

A. I suppose I realized—I cannot tell what the proportion of the original stock was to the Detroit street railway.

Q. What dividend did you receive on the stock?

A. I cannot answer that without going to the records; you imagine

it is an easy thing to go back and recall; I cannot answer the question without going into the history——

Q. What did you do with the stock of the Detroit Street Railway Company which you received in exchange for the Detroit city railway?

A. My impression is that I have got it yet, sir.

Q. Do you mean by that that you have got that stock or that you have stock in the Detroit Citizens' railway in place of it?

A. I have no stock in the Citizens' railway; never had.

Q. You still hold your stock in the Detroit street railway?

A. Yes, sir.

Q. What did you do with that stock?

A. I think it is in my box in the safe where it has been for a good many years, lying quietly. It does not disturb me. There has been no demand for it. I should have been glad to sell it a good many times.

Q. What will you take for it?

193 A. If you want to enter into negotiations for the purchase I will be glad to meet you out of court.

Q. What became of the property of the Detroit street railway?

A. Transferred all of it to the Detroit Citizens' railway—not quite all.

Q. What compensation did you get as stockholder when that transfer was made?

A. I cannot answer that without looking back to the record. I will tell you one thing, I did not get anything but what I was entitled to for the amount of care and trouble I had taken with refence to the property.

(Signed) SIDNEY D. MILLER.

Subscribed and sworn to before me this 7th day of December, A. D. 1895.

DAVID E. GREENSTINE,
Circuit Court Commissioner, Wayne County, Mich.

STATE OF MICHIGAN:

EXHIBIT "A," E. H. C.

A bill to authorize the common council of the city of Detroit to grant permission to any street railroad company within said city to use the roads, tracks, wires and poles of any other street railroad company, situated within certain territory within said city, and to authorize the street railroad company to which such permission is granted to acquire by condemation the right to use such roads, track, wires and poles, for the purpose of terminal facilities.

194 SECTION 1. The people of the State of Michigan enact, whenever any street railroad company in the city of Detroit, authorized to operate street railway lines therein, shall desire the use of any of the roads, tracks, poles and wires of any other street

railroad company, situated within the territory in said city bounded on the west side by Third street, on the north by Beach street and Adams avenue, on the east by St. Antoine street, and on the south by Detroit river, it shall be competent for such company to petition the common council of the city of Detroit for permission to acquire the use of such part of the roads, tracks, poles and wires, situated within said territory, in common with such other company upon any street which it needs to make use of for the accommodation of the traveling public, and to acquire the same under the provisions of this act.

SEC. 2. The common council of the city of Detroit, upon the petition of any street railroad company, may determine by resolution that the public necessity requires that such petitioner shall have the right to use any portion of the road, tracks, poles, and wires of any street railroad company owning and operating a street railway upon any street in said city, and may grant its consent to such petitioner to acquire such part of any street railroad company's road, tracks, poles and wires, situated within said territory, as it may deem to be for the public use and benefit, and designate such part of the road, tracks, poles and wires which it deems necessary to acquire for use in common by street railroad companies.

SEC. 3. Any street railroad company to which the consent of the common council of the city of Detroit is granted as herein contemplated, may present its petition to any court of record in the city of Detroit or county of Wayne. Said petition shall be in the name of the company to which such grant was made, and shall set
195 forth the proceedings of the common council in relation thereto, with a certified copy of the resolution thereof; shall describe the roads, tracks, poles and wires, or so much thereof as the company seeks to acquire under such petition, within said territory in said city, the name of the railroad company and others interested in the property therein described, and shall be signed by an officer of said company and verified by his oath.

SEC. 4. Upon filing said petition, it shall be the duty of the clerk of said court to issue a summons against the respondents named in the petition, commanding them to appear before said court at a time and place to be named in said summons, not less than twenty days nor more than thirty days from the date of the same, and show cause, if any they have, why the prayer of said petition should not be granted.

SEC. 5. Said summons shall be served by the sheriff, under sheriff, or deputy sheriff of the county of Wayne, at least five days before the return day thereof, upon all the respondents found within the county, by exhibiting the original and delivering a copy to each of them. Service may be made upon any street railroad company in the same manner as is now provided by law for the service upon such companies in civil actions. If any respondent is a resident of the county and cannot be found, summons shall be served by leaving a copy thereof at his or her usual or last place of abode with some person of suitable age and discretion. If any minor, or person of unsound mind, is interested in the property to be taken, service

may be made upon the guardian of such person, if any, and if there is no guardian, the court may appoint some discreet and proper person to be guardian for such person in such proceedings. Any such guardian shall have authority to represent such person in such proceedings. The proceedings to appoint such guardian
196 shall be the same as in other cases provided by the statute.

If it shall appear upon the return day of the summons that any respondent cannot be found in the county, and has not been served in the manner provided, or is a non-resident and has not voluntarily appeared, the court may make an order requiring such respondent or respondents to appear and show cause why the prayer of the petition should not be granted, on a day to be named in the order, not less than thirty days from the date thereof, and may require that a certified copy of said order be personally served upon such respondents wherever found, if practicable, at least six days before the time named in the order for appearance, or the court may make such order for appearance and require, as to any of such non-resident respondents who shall not have been served and have not appeared, that service be made by publishing a certified copy of such order for three successive weeks, at least once in each week, in at least one newspaper published within the city, the last publication to be at least six days before the day fixed in the order for appearance.

Alias and pluries summons may be issued, and the court may adjourn the proceedings from time to time as there shall be occasion, and as in other civil cases.

Service of such order for appearance in either mode prescribed shall be sufficient notice of the proceedings to bind the respondents and the property represented by them. The return of the officer upon the summons of due service, and affidavit of publication of the order for appearance, if any, shall be filed in the clerk's office, before a jury shall be impaneled, and shall be sufficient evidence of service on the respondents and of the manner of service.

In all cases not otherwise provided for service of orders,
197 notices and other papers in the proceedings authorized by this act may be made as the said court, or the judge thereof, may direct.

SEC. 6. On the return day of the summons, or on some subsequent day to which the proceedings are adjourned, if no sufficient cause to the contrary has been shown, the court shall make an order that a jury may be impaneled in the case. Such jury shall be composed of twelve freeholders of the city, and shall be selected and impaneled as follows: The sheriff, under sheriff, or a deputy sheriff of the county, shall, on the same day, or on an adjourned day make a list of twenty-four resident freeholders of said city and the petitioner, and the respondents collectively, shall each have the right to strike six names from the list of persons written down as aforesaid, and, subject to objection for cause, the twelve persons whose names are left on the list shall compose the jury for the trial of the case and shall be summoned to attend at such time as the court shall direct by the venire issued by the clerk of the court, and

to be served by one of the officers aforesaid. If the respondents neglect or refuse to strike six names from said list, it shall be done by the judge of the court, and in case any of the persons to be summoned cannot be found in the county, or being summoned do not attend, or shall be excused for cause, or otherwise, talesmen possessing the necessary qualifications, may be summoned as jurors in the case by such sheriff or sheriff's officer, or authorized person, and the practice and proceedings under this act, except as herein provided, relative to impaneling, summoning and excusing jurors and talesmen shall be the same as the practice and proceedings of the circuit courts of the State relative to petit jurors in civil cases in such courts, except that peremptory challenges shall not be allowed. If any juror after being sworn shall die, or become unable to discharge his duties, the court may appoint any other qualified person
198 to serve in his place, who shall be sworn and take his place upon the jury, or may in the discretion of the court impanel a new jury.

SEC. 7. The jurors so impaneled shall be sworn in substance as follows: "You do solemnly swear that you will well and truly ascertain and determine the necessity for taking for the use and benefit of the public the property which the petition describes and prays may be taken, and if you shall determine that it is necessary to take said property that you then ascertain, determine and award the just compensation to be made therefor and faithfully and impartially discharge all such other duties as devolve upon you in this case and unless discharged by the court a true verdict give according to the law and the evidence, so help you God, or under the pains and penalties of perjury." The jury shall hear the proofs and allegations of the parties and if so ordered by the court shall go to the place of the property proposed to be taken in charge of an officer and examine the situation thereof. They shall be instructed as to their duties and the law of the case by the judge of the court, and shall retire under the charge of an officer, and render their verdict in the same manner as on the trial of an ordinary civil case, but the same shall be in writing, and be signed by the foreman, or by all the jurors.

SEC. 8. The jury shall determine in their verdict the necessity for taking such private property for the use and benefit of the public, for the purposes for which it is proposed to be taken, and in case they find that such necessity exists, they shall award to the owners of said property, and others interested therein, such compensation therefor as they shall deem just. If any such property shall be subject to a mortgage, lease or agreement or other lien, estate or interest, they shall apportion and award to the parties in interest such portion of the compensation as they shall deem just.

199 SEC. 9. To assist the jury in arriving at their verdict, the court may allow the jury, when they retire, to take with them the petition filed in the case, and any map that may be used in the proceedings, showing the situation of the property, and may also submit to them a blank verdict which may be as follows:

PART I.

We find that it is — necessary to take the property described in the petition in this case, for the use and benefit of the public for the purposes proposed in said petition.

PART II.

The just compensation to be paid for such property, we have ascertained and determined, and hereby award as follows:

Description of the property to be taken.	Owners and others interested in the property.	Compensation.	To whom payable.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

The description of the property and the names of the owners and others interested therein, may be inserted in said blank verdict under the direction of the court, before it is submitted to the jury, or it may be done by the jury. The court may, before the
200 jury is finally discharged, refer their verdict and finding back to them for the correction of any errors, defects or insufficiencies therein contained. The verdict of the jury may be set aside by the court and a new trial ordered as in civil suits at law in the circuit courts of this State, for objections of law and for matters of substance, but not for objections as to matters of form, and amendments either in form or substance may be allowed in any paper, petition, process, record or proceeding, or in the description of property proposed to be taken, or the name of any person, whether contained in a resolution passed by the common council, or otherwise, whenever the amendment will not interfere with the substantial rights of the parties. Any such amendment may be made after as well as before judgment confirming the verdict of the jury. In case the verdict of the jury shall be set aside by the court and a new trial ordered, like proceedings for impaneling a new jury shall be taken for retrial as are hereinbefore provided.

SEC. 10. Motions for a new trial or to arrest the proceedings shall be made within two days after the rendition of the verdict, unless further time is allowed by the court; and if no such motion is made, or being made is overruled, the court shall enter on order confirming the verdict of the jury, which order shall contain a description of the roads, tracks, poles and wires for which compensation is to be made, and shall direct to whom the money is to be paid, and when and where it shall be deposited by the petitioner. Said court shall have all the usual powers in such cases.

SEC. 11. Thereupon, on the payment or deposit by said petitioner of the sum to be paid as compensation for such roads, tracks, poles and wires, as directed by said order, the petitioner shall be entitled to enter upon and take possession of and use the said roads, tracks, poles and wires for the purposes set forth in said petition.

201 SEC. 12. In case of the resistance or refusal on the part of any person to the said petitioner or their agents or servants entering upon and taking possession of such roads, tracks, poles and wires and property for the uses for which the same were taken, at any time after the amount of compensation aforesaid is actually paid or deposited, the said petitioner may apply to the court and shall be entitled, on making a sufficient showing, to a writ of assistance to put them in possession of such rights in said property.

SEC. 13. Upon payment or deposit of the compensation awarded by the jury and compliance with the order of the court in relation thereto, the said petitioner shall have the right to enter upon the roadway so taken as aforesaid and make all the necessary connections by means of switches and turnouts or otherwise, with the tracks and wires in such manner as to enable petitioner to fully operate its cars from its own tracks over and upon the tracks so taken as aforesaid, and in the making of such connections it shall be the duty of said petitioner to perform the same in such manner as to least obstruct and inconvenience the operation of the cars of such other company, and so as to least interfere with its business while said work is being done, and it shall be the duty of said petitioner to so construct such connections with switches or otherwise, as to enable such other company to continue the operation of its railway in substantially the same manner as before such connections were made.

SEC. 14. All damages and expenses incurred in the maintenance and repairs to such property used by two or more companies as herein provided, shall be borne equally by such companies, and in case of the neglect of either company to make such necessary repairs, the same shall be made by the other company, in which case the company so making such repairs shall have the right to compensation from such other company or companies, for their

202 just proportion thereof, to be recovered by such company making the repairs against such other company or companies in an action of assumpsit.

SEC. 15. The common use hereby authorized to be made on such roads, tracks, wires, poles and property of street railroad companies, shall be the common use for purposes of traffic only, and neither company having such common use of such property shall be permitted to make the track so used in common the depot or general stopping place for cars, but shall only be entitled to use the same for the ordinary passage of cars and the ordinary halts for the taking up and dropping off of passengers.

SEC. 16. Any person whose property may be taken, considering himself aggrieved, may appeal from the judgment of the court confirming the verdict of the jury by filing in writing with the clerk of said court a notice of such appeal within five days after the con-

firmation, and within the same time, serving a copy thereof on the attorney of the petitioner, and filing a bond in said court, to be approved by the judge thereof, conditioned for the prosecution of said appeal to judgment, and the payment of all costs, damages and expenses that may be awarded against him, in case the judgment of confirmation shall be affirmed. Such appeal shall be perfected within the same time and prosecuted as in an appeal in chancery, as near as may be, subject to the provisions of this act.

SEC. 17. In case of such appeal, the clerk of the court, on payment of his legal fees and charges, shall transmit to the supreme court a certified copy of the necessary files, records, and proceedings in the case, and the judge of the court shall, at the request of the appellant, settle the case according to the usual practice of said court, showing the material evidence and instructions given to the jury bearing upon any disputed points to which exceptions
203 were taken, and the objections, rulings and exceptions in the case, all of which shall be returned by said clerk as part of the records, to the clerk of the supreme court.

SEC. 18. The said appeal may be brought on for hearing at any term of the supreme court, and said court may affirm, or for any substantial error reverse the judgment and may grant a new trial.

Certified:

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "B."

From Journal of Common Council Proceedings for 1862, page 55.

An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit.

It is hereby ordained by the common council of the city of Detroit:

Whereas, H. K. Sanger, R. N. Rice, J. W. Kelsey, John J. Harris, John H. Wiggins, Amos B. Merrill, John L. Lawrence, their associates, successors and assigns, propose to organize as a body politic and corporate under a charter from the legislature of Michigan, or under the "Act to provide for the construction of train railways," approved February 13th, 1855 (Laws of 1855, page 338), for the purpose of constructing and operating in and through the streets of the city of Detroit; therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in H. K. Sanger, R. N. Rice, J. W. Kelsey, John T. Harris, John H. Wiggins, Amos B. Merrill,
204 John L. Lawrence, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, sidetracks and switches in and along the course of the streets and

bridges in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance: Provided, that nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running into the city of Detroit.

SEC. 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate railways as herein provided through Woodward, Jefferson and Michigan avenues and through Gratiot and Grand River streets, and from Jefferson avenue through Woodbridge street to Seventh street, up Seventh street to Fort street, and through Fort street to the western limits of the city, and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the common council of said city of Detroit, and assented to in writing by said corporation organized as provided in section 1 of this ordinance;

And provided, the corporation does not assent in writing within thirty days after the passage of such resolution of the council, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense; provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward avenue
205 railways in such direction that said railways shall be continued down to and from each of them one continuous route to Jefferson avenue: Provided, always, that said railways down Gratiot street may be continued to Woodward avenue through State street, or through Randolph street and Monroe avenue and the Campus Martius as the grantees or their assigns under this ordinance may elect.

SEC. 3. The railways in all the streets shall be laid in the center thereof, if on a single track; and if on a double track, the inside rail of each track shall be laid within two feet and four inches of the center of the street; the said rails shall be laid four feet and eight inches apart, so as to accommodate the most common width of carriage wheels: Provided, nevertheless, that in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon, for public use, they may at any time thereafter, within five years, build a second track, so they do not interrupt the running of their cars on the first completed track; provided the consent of the common council is first obtained.

SEC. 4. The track of such railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grade thereof

now established, or as they shall from time to time be re-established or altered; and in case of grading, paving or otherwise, it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets and parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere
206 with the public travel thereon, and as shall be authorized and approved by the city surveyor. The grantees, or their assigns, shall be required to keep the surface of the streets inside the rails, and for two feet four inches outside thereof, in good order and repair, and all snow, ice, dirt and filth cleaned and removed from the streets at the expense of the grantees.

SEC. 5. The routes of all said railways shall commence in the Woodward Avenue road at Campus Martius; from thence running on their several courses to the outer limits of the city; provided, that in collecting fare that that portion between Brush and Seventh streets, on Jefferson avenue and Woodbridge street, shall be estimated as belonging to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, and shall only pay one fare.

SEC. 6. Said railway on Woodward avenue to the northern line of the city and through Woodbridge street from its intersection with Seventh street, through Jefferson avenue to the eastern limits of the city, shall be completed within nine months from the thirty-first day of March, A. D. 1862, and the railway through Gratiot street shall be completed by the first day of September, A. D. 1863, and the remainder of said track through Michigan avenue and Grand River street shall be completed within two years from and after the thirty-first day of March, A. D. 1862.

SEC. 7. The city of Detroit may at any time during the continuance of this ordinance, and after the expiration of ten (10) years from the opening of any part of said railway for use, purchase of said grantees, or their assigns, all the franchise, property, rights, and furniture of said railway by paying them therefor such a sum as will reimburse to each person who may be a stockholder therein the actual value of his stock, not exceeding its par value, together
207 with a net profit of ten per cent. per annum from the time of the transfer of said stock to him, deducting the dividends received by said stockholder thereon. In case of any dispute between the city and said grantees as to the value of said stock, said dispute shall be referred for adjustment to two persons, one appointed by the city and the other by the grantees, whose decision shall be final between the parties, and who, in case they cannot agree, may appoint an umpire, whose decision shall be final.

SEC. 8. The cars to be used on said railways shall be drawn by animals only at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require and the common council shall prescribe: Provided, always, that said council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April, and the cars in use upon said railways shall be run

for no other purpose than to transport passengers and their ordinary baggage, and the cars and carriages for that purpose shall be of the best style in use on such railways: Provided, that other cars and carriages may be used for cleaning said railway track from obstructions by snow or otherwise.

SEC. 9. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance; and provided further, that said grantees shall commute tickets for fare in bundles of thirty tickets for one dollar, except where cars or carriages shall be chartered for specific purposes: Provided, cars so chartered shall not be considered regular cars within the meaning of the preceding section.

SEC. 10. Cars drawn in the same direction shall not ap-
208 proach each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SEC. 11. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision or to avoid danger to persons or property in the street.

SEC. 12. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 13. The grantees, or their assigns, shall employ careful, sober and prudent agents, conductors and drivers to take charge of their cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages and persons on foot, and especially children, either upon the track or moving toward it; at the first appearance of danger to such teams, carriages, footmen or children or other obstructions the cars shall be stopped in the shortest time and space possible.

SEC. 14. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SEC. 15. Conductors shall announce to passengers the names of the principal squares and streets as the cars reach them.

SEC. 16. The cars at all times shall be entitled to the track, and any vehicles upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the drivers of any vehicle refusing to do so shall be liable to a fine not exceeding five dollars on conviction before the recorder's court of said city of Detroit and costs of prosecution shall not be at the expense of the city.

SEC. 17. The cars, after sunset, shall be provided with signal lights—red in front and green in rear of the cars.

209 SEC. 18. Wherever gas and water pipes and sewers are now laid in the streets herein specified, and through which railways are to pass, the said railway must be laid down and maintained subject to the right now in the city, and the gas company and the sewer and water commissioners to take up or remove said pipes or sewer in such a manner as to not unnecessarily to damage or injure said railways or their use, without claim against said city, gas company or water or sewer commissioners; and the common

council expressly reserves to itself the right hereafter to lay down or to permit to be laid down and repaired in said streets gas or water pipes and sewers whenever the public or private convenience may require; the said gas or water companies or private individuals who shall take up pavements for the purposes aforesaid, being always required as by the present city ordinance to restore the pavement in the street to its former condition.

SEC. 19. If said grantees or other assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to any and every route established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the council does not extend the time: Provided, that if said grantees shall be delayed by the order or injunction of any court: Provided, said injunction is not obtained by the connivance of the said grantees. And, provided further, that if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SEC. 20. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railways.

SEC. 21. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

SEC. 22. This ordinance shall be void and of no effect unless the grantees shall, within one month from the date of the passage thereof, notify the common council, in writing, of their acceptance of and agreement to the provisions of this ordinance, and shall deposit with the city controller the sum of $5,000, which sum shall remain in the hands of the controller until full compliance is made with the provisions of this ordinance.

SEC. 23. The said grantees and their assigns shall pay to the treasurer of the city of Detroit, annually, twenty-five dollars on each and every passenger or other car, excepting only those cars used for cleaning the track on said roads, to be collected as a license for the use of the city after the term of five years from and after this date.

SEC. 24. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

Approved May 24th, 1862.

WM. C. DUNCAN, *Mayor.*
FRANCIS PRAMSTALLER, *City Clerk.*

Certified:

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

211 EXHIBIT "C."

(From Journal of Common Council Proceedings, 1862, page 110.)

By Ald. Shearer:

Resolved, That the controller be, and he hereby is, directed to advertise for thirty (30) days for proposals for building the street railways specified in the ordinance, entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit," and that the controller be directed to use the above-named ordinance as a specification on which to receive proposals after having stricken out the names of the persons contained in said ordinance, and extending the time therein specified eight (8) months from the different times specified in said ordinance for the building of the several roads.

Adopted as follows:

Yeas—Ald. Bond, Farrand, Ford, Frost, Gallager, Godfrey, Leroy, Miller, Purcell, Shearer, president—11.

Nays—none.

EXHIBIT "D."

(From Journal of Common Council Proceedings for 1862, page 131.)

CONTROLLER'S OFFICE,
DETROIT, *August 29th*, 1862.

Street railways.—In pursuance of a resolution of the common council, the undersigned will receive sealed proposals during
212 the ensuing thirty days for constructing the street railways specified in the ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit." The names of the corporators in said ordinance have been stricken out by the common council, and the time for the completion of said railways is extended eight months. Copies of the ordinance will be furnished on application.

D. C. WHITWOOD, *Controller.*

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "E."

(From Journal of Common Council Proceedings for 1862, page 125.)

DETROIT, *September 30th*, 1862.

To the Hon. the common council.

GENTLEMEN: Herewith I respectfully submit the only proposal that has been received for constructing our street railways. It is from C. S. Bushnell. Accompanying it is a letter of E. N. Wilcox, Esq., the attorney of Mr. Bushnell, and which I have deemed it per-

tinent to place before you. The city attorney has marked out on the map, in this office, the respective points to which Mr. Bushnell's proposal would carry the roads; and an inspection of the map will give the council a correct idea of the distances.

D. C. WHITWOOD, *Controller.*

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

213 EXHIBIT "F."

(From Journal of Common Council Proceedings for 1876, page 630.)

Special.

To the honorable the common council.

GENTLEMEN: The undersigned, to whom was referred the communication of Sidney D. Miller, Esq., as president of the Detroit City Railway Company, in relation to the exclusive right of said company to construct and operate railways in this city, report that they have given the matter full consideration; that section 2 of the ordinance, granting to said company the right to construct a street railway, reads as follows: "The said grantees are, by the provisions of their ordinance, exclusively authorized to construct and operate railways as herein provided in and through Jefferson, Michigan and Woodward avenues, etc., in said city as may from time to time be fixed and determined by vote of the common council of the said city of Detroit, and assented to in writing by the said corporation organized as provided in section 1 of this ordinance; and, provided the corporation does not assent in writing within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid at their own expense;" and it appears to your committee, from this language, that something more than the right to construct a railway through the particular streets named was intended, and we think a fair construction of this section leads to the following con-

214 clusion: That whenever the council shall decide that a street railway is required for the public convenience, and shall by vote fix and determine the streets through which the same shall be constructed, the Detroit City Railway Company has the first and exclusive right to construct and operate it, if it shall in thirty days assent so to do. If it does not, then the council may grant the right to another company.

In practice, this requires the council to first determine and fix the route for a street railway to be constructed, then the Detroit city railway has the first right to construct it if it within thirty days assent to it in writing.

If any question arises as to the right of the city railway com-

pany creating a monopoly, we think that may be better settled by the courts when it becomes necessary.

Respectfully submitted.

GEORGE DUNLAP,
JOHN D. FINNIGAN,
Committee on Judiciary.
D. C. HOLBROOK,
City Counselor.

Accepted and laid on the table for one week.

Certified:
D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "G."

(From Journal of Common Council Proceedings for 1876, page 646.)

Unfinished Business.

On motion of Ald. Dunlap, the report of the special committee of November 27th on the communication of S. D. Miller on the rights of the Detroit City Railway Company was taken from the table and adopted.

Certified:
D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

215 EXHIBIT "H."

(From Journal of Common Council Proceedings for 1876, page 650.)

Communication.

To the honorable the common council.

GENTLEMEN: The Central Market, Cass Avenue and Third Street railway hereby agree that as soon as an ordinance shall be passed by your honorable body by which it shall be entitled to lay its track and run its cars up Cass avenue to the Holden road, and thence on the Holden road to Third street, it will file with the city clerk a waiver (in such terms as the common council shall direct) of all rights it may now have to lay its track or run its cars on any street which is not now occupied or used by it for such purpose, excepting, however, Third street.

CENTRAL MARKET, CASS AVENUE & THIRD STREET RAILWAY COMPANY,
By WM. D. MORTON, *Secretary and Treasurer.*

Detroit, December 19th, 1876.

Accepted and placed on file.

Certified:
D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "I."

(From Journal Proceedings of Common Council for 1876, page 663.)

Reconsideration.

On motion of Ald. Dorr, the vote whereby the ordinance to amend section 1 of an ordinance authorizing the Central
216 Market, Cass Avenue and Third Street railroad to construct and operate its railroad was laid on the table, was reconsidered.

Ald. Finnegan moved that the ordinance lie on the table for one week.

Lost as follows:

Yeas—Ald. Blodgett, Finnegan, Haller, Heames, Jackson, Kurtz, Liggett, Shanahan and Wilks—9.

Nays—Ald. Christian, Dorr, Finney, Guthard, Mitchell, Owen, Rowland, Schmitt and the president *pro tem.*—10.

The ordinance was then passed by the following vote:

Yeas—Ald. Christian, Dorr, Ewers, Finney, Guthard, Heames, Mitchell, Owen, Rowland, Schmitt, Shanahan and the president *pro tem.*—10.

Nays—Ald. Blodgett, Finnegan, Haller, Jackson, Kurtz, Liggett and Wilks—6.

The title of the ordinance was confirmed.

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "J."

(From the Journal of Proceedings of Common Council for 1877, page 12.)

MAYOR'S OFFICE, *January* 8, 1876.

To the honorable the common council.

GENTLEMEN: I return to your honorable body that part of the proceedings of the 5th inst. entitled An ordinance to amend section 1 of an ordinance authorizing the Central Market, Cass Avenue and Third Street railway to construct and operate its railroad, for
217 the reason that the ordinance seems inconsistent with the report of the judiciary committee and the city counselor of the 5th ult., to your honorable body, who state that the contract between the city and the Detroit City Railway Company is, that whenever the common council shall decide that public convenience requires that a street railroad *to* be built, it shall, according to the terms of the contract, first notify that corporation of their decision; and if, within thirty days, they do not accept, then the city is at liberty to grant the use of the street to any other corporation. If the committee are right, then by granting this franchise asked we

render the city subject to a lawsuit and, perhaps, liable for damages and then, too, if public convenience requires that the road should be built, the parties obtaining the grant should give sufficient security for the faithful performance of their part of the contract, which is not the case in the ordinance referred to above; for if these grants are to be binding on our part, and not on the other, it will be an easy matter to obtain the right of way through every street in the city, and if thought profitable, build a few hundred feet (as has been already done in some instances in this city), or perhaps build no part of it, but abandon the contract.

I do not wish to be understood as opposing this grant. On the contrary, I think the road should be built; therefore, let us make sure that it shall be by asking such guarantees that will make it reasonably certain that it will be done within the time stipulated in the ordinance.

Yours respectfully, ALEX. LEWIS, *Mayor.*

On motion of Ald. Finnegan the vote whereby the said ordinance was passed was reconsidered.

218 On motion of Ald. Guthard the ordinance was laid on the table.

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "K."

(From Journal Proceedings of Common Council for 1877, page 14.)

Resolutions.

Fifth ward.

By Ald. Dunlap:

Resolved, That the council deem it necessary that a street railroad be constructed in Cass avenue, from Ledyard street to Holden road; in Holden road, from Cass avenue to Third street, and in Third street, from Holden road to the present terminus of the Central Market and Cass Avenue railway track; also in Third street, from Ledyard to Larned street, and that the same be completed and in operation within the year 1877; and

Resolved, That the city clerk be, and he is hereby, instructed to notify the city railway company of this resolution, and that the same is subject to their acceptance for thirty days from this date.

Laid on the table for one session.

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

EXHIBIT "L."

(From Journal Proceedings of Common Council for 1877, page 15.)

Unfinished Business.

Ald. Dunlap moved to take from the table the following resolution offered by himself:

219 Resolved, That the council deem it necessary that a street railroad be constructed in Cass avenue, from Ledyard street to Holden road; in Holden road, from Cass avenue to Third street, and in Third street, from Holden road to the present terminus of the Central Market and Cass Avenue railway track; also in Third street, from Ledyard to Larned street, and that the same be completed and in operation within the year 1877; and

Resolved, That the city clerk be, and he is hereby, instructed to notify the city railway company of this resolution, and that the same is subject to their acceptance for thirty days from this date.

Ald. Weir moved to refer the resolution to the committee on streets.

Adopted.

Certified:

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

Appearances: Mr. Fred. A. Baker and Mr. Harrison Geer for the complainant. Mr. John B. Corliss and Mr. Charles Flowers for the defendants.

Testimony taken on behalf of the complainant before Cir-
220 cuit Court Commissioner D. Augustus Straker, on the 19th day of November, 1895, at 10 o'clock a. m.

TOM L. JOHNSON, a witness produced on behalf of the complainant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Examined by Mr. BAKER:

Q. Where do you reside?
A. In Cleveland, Ohio.
Q. How long have you lived there?
A. Twelve or thirteen years.
Q. What is your business?
A. The street railroad business.

Q. How long have you been in the street railroad business?
A. Twenty-five years.
Q. Are you familiar with that business?
A. Yes.
Q. Are you competent to express an opinion upon most any branch of it?
A. Well, I think so.
Q. Are you connected with the Detroit Citizens' Street Railway Company?
A. I am.
Q. How long have you been connected with that company?
A. Officially since near the first of the year, since the early part of January, 1895.
Q. As a stockholder?
A. As a stockholder for some months before that; that is, I was interested in the stock some time before that—I would rather make it that way.
Q. Have you been in Detroit for a good portion of the time for the last year or two?
221 A. I have been in Detroit the greater portion of the time since the first of January, 1895.
Q. You have become familiar with the city and the way it is located, and the places where its principal business is carried on?
A. I think I understand the plan of the city very well.
Q. I suppose you are familiar with the lines of railway of the Detroit Railway Company; the new company?
A. Yes.
Q. One of the things that I desire to inquire of you about is the question of whether in your judgment as an experienced railroad man the two systems of railroad could be operated more advantageously to the public and the companies if they were both together.

Objected to as immaterial.

Q. I want the opinion of a practical railroad man on that question to supplement our theory of the case.
A. There is no doubt that both the companies and the public would be better served by a consolidation of the two companies, or a running arrangement between the two companies.
Q. Under one management?
A. Under one management.
Q. A street railway is what is generally known in Congress and among scientists as a natural monopoly?
A. I would say an artificial monopoly, but still a monopoly. You cannot have real competition entering into the street railway business. You may divide it by two or more, but still it is a monopoly.
Q. Is it practicable to have, in a city like this, competing lines on the same street?
A. I don't think it is practicable to have two lines on the same street for any great length at least.
Q. If there were two different companies organized to op-
222 erate on the same street, I suppose they would eventually get

together, so as a practical thing there should be but one line on a street.

A. The history shows that they usually get together, but there is this objection to that, that I think in fairness I ought to state, that the only way in which a company can expect to hold a complete monopoly is to fill the wants as they arise; otherwise than that it is certain to have to divide with some other company.

Q. I notice that one of their lines, the Fourteenth Avenue line, goes down Fourteenth avenue and crosses two of your lines, in a zigzag or angular sort of way to reach the center of the city. If they were operated under one system would the two lines be operated in that way?

A. No. They could be so arranged as to reach the center of the city from those districts by more direct lines.

Q. The Fourteenth Avenue line north of Grand River could come down Grand River street or go further south and come down Michigan avenue?

A. Yes, sir, and the Fourteenth Avenue line crosses Grand River three times. It travels on the sides of a triangle while the Grand River road takes the hypothenuse.

Q. They have a line on the east side somewhat similarly situated?

A. Not so much so. The diagonal streets on the east side don't offer the same advantages of saving distances that they do on the west, and there are more of them on the west side. For instance the Hastings and Beaubien Street line would gain very little by use of the diagonal on Gratiot although it would gain something, but relatively less than on the other side.

Q. What about the power-house? Take modern electric railways and if it were all operated under one system could a saving be made in that respect?

A. A very great saving.

223 Q. Mr. Everett testified that their power-house complete cost about three hundred and fifty thousand dollars, and that they could operate both systems with it?

A. He is mistaken; they could not operate both systems with his power-house that cost $350,000. Our power-house cost $450,000, and it is certainly economically built, and it is not too large for our system. What he meant, probably, was that he had room enough on his lot to erect a power-house. They could do it I have no doubt, but not for $350,000.

Q. But it would be perfectly practicable to operate the entire railway system of both companies from one power-house?

A. Oh, yes, and more economically.

Q. And of course it is a general principle that the more economically you can do business the cheaper you can carry passengers?

A. Yes, and the more money we can make.

Q. When did you first become connected with the Citizens' Railway Company?

A. Officially in January, 1895.

Q. Financially, I mean?

A. Some months before that.

Q. I suppose you understand the history of that company? It was organized, I think, in 1891, and only had a brief existence before you became connected with it.

A. Yes, I am aware of that.

Q. Were you one of a party of gentlemen who purchased that road, and who are the present owners of it?

A. Yes.

Q. At that time electricity was only in on two streets, as I remember it, on Jefferson and Woodward?

A. And Mack avenue.

Q. That is an out-country line?

A. Yes.

224 Q. But electricity was not in Gratiot street?

A. No.

Q. So the Mack Avenue cars could not come down Gratiot?

A. No.

Q. That was the situation of it—all the other roads were operated by horses?

A. That is true.

Q. Will you tell us about what the railroads cost you in round numbers, not exactly?

Objected to as immaterial.

A. Do you mean what we paid for the property?

Q. Yes; what you paid for the property?

A. We paid and assumed about $3,600,000.

Mr. CORLISS: That was on the original cost?

A. On the original cost.

Mr. BAKER:

Q. That was the actual cost of the property; that is, you bought the bonds and the stock?

A. We bought the stock and assumed the bonds and arranged to have the floating debt carried in addition.

Q. So it represented a cost to you of about $3,600,000?

A. Yes, in addition to the floating debt.

Q. Can you tell us what improvements and changes you have since made in the roads?

A. We have reconstructed the tracks; we have built a new power-house; we have new car-houses; we have furnished new motors, new cars and overhead construction, even on the old electric lines.

Q. Did you relay the track on the old electric lines on Jefferson and Woodward avenues?

A. On Jefferson avenue, not on all of Woodward. We did on a part of it; and we put new cars and new motors on all of those—many new cars and all new motors, to be exact.

225 Q. You put down a concrete foundation and a heavy grooved rail?

A. Yes, a ninety-eight-pound rail, steel cross-ties, and concrete foundation.

Q. How would it compare with the best street railway construction?

A. It is the best I have ever seen.

Q. That is, it is the hight of the art in building roads?

A. I think so. I have never seen anything that compared with it.

Q. You have put in this improved system on all the lines of the Citizens' Company?

A. Nearly all. There are a few little ends that have not yet been completed.

Q. But it is nearly all completed?

A. Nearly all.

Q. Will you tell what the outlay has been in addition to your original purchase of $3,600,000; what additional expense has been incurred or outlay has been made in making these improvements?

Objected to as immaterial.

A. We have discharged a floating debt of nearly a million of dollars; we have spent the proceeds of $3,335,000 of bonds sold at eighty cents on the dollar, and up to date we have probably $300,000 on hand, with contracts outstanding that amount to much more than that which will have to be paid off before the first of January.

Q. What would you say in round numbers was the aggregate outlay, including the discount on the bonds?

A. Including the discount on the bonds there would be $4,330,000, and we still have a million dollars of bonds that we have not received the money for yet, that we have to go on and complete with. We have actually collected all the money except on the last million.

Q. The actual outlay, then, would be at least equivalent to
226 $3,400,000, I mean of actual cash, that went into the construction and improvements.

A. And paying the floating debt?

Q. Yes?

A. Yes, it will be more than that by the first of January, assuming our contracts will be carried out. Up to date it is something less than that amount.

Q. What interest do you pay on your bonds?

A. Five per cent., on the blanket seven-million-dollar mortgage, of which one million has not yet commenced to draw interest. It all bears five per cent. except the old city mortgage of one million of dollars and the Grand River ($150,000 of Grand River bonds), which draws six per cent. so long as we retain the option to pay them off on ten days' notice. If we at any time shall declare the option off we pay five. We have always paid the extra one per cent. for holding the option.

Q. In the sale of those bonds did you get all you could for them?

A. We got all we could for them.

Q. Can you tell us what the average rate of fare is on the road now?

A. There are two ways of figuring it; taking the average rate of

paid passengers and excluding transfers, it is 4.20, or a little over; including the transfers it is 3.80, between 3.80 and 3.90. I can give you those figures exactly.

Q. Have you recently made any estimate of the earnings of the company or what they will be this year?

A. Yes, sir.

Q. As I understand your testimony there is a total investment here that yourself and associates have made of about seven millions of dollars; I would like to know what the net earnings over
227 and above the operating expense will be in the year 1895, on the basis of the continuance of business until the first of January?

A. For the twelve months preceding October 1, the receipts were a million and not quite one hundred thousand dollars. The net receipts were $277,000; the interest on bonds and the floating debt deducted for that period left not quite sixty thousand dollars above interest that was actually paid out. Of course that was during the period of reconstruction and all the bonds did not bear interest for the whole year. I cannot give you those figures accurately now.

Q. I just wanted to prove it in a general way.

A. It shows just about six per cent. on the stock for that time, but we shall probably have more net earnings and also a larger interest account to follow.

Q. When you have the whole seven million out, the interest account will be about $350,000?

A. A little in excess of that.

Q. As I understand your testimony the net profits will just about pay that?

A. A little more than pay it. What I say is there will be an increase of the interest account and an increase of receipts too.

Q. How does your system compare at the present time, taking your lines and motors and rolling stock and the Detroit Citizens' Street Railway Company as a whole, with the best systems in the country?

A. I think we are the best and most modern.

Q. It is up to date in every particular?

A. Yes.

Cross-examination.

Mr. CORLISS:

Q. When you became officially connected with the Citizens' Company you were aware that the defendant, The Detroit
228 Railway, had an ordinance in the common council for the construction of its lines?

A. I knew that the ordinance has been passed by the city council and was familiar with it even at the time of its passage.

Q. And you knew that a large deposit had been made as a guaranty for the construction of the work?

A. I knew it was claimed it had been made.

Q. You hadn't any doubt then but what it would be fulfilled, had you?

A. I had every doubt that the guaranty was worth anything; that the city would get anything if they didn't build.

Q. You knew there was a deposit of $50,000 in cash?

A. I heard so.

Q. You had no idea but what the Detroit Railway Company would construct its lines?

A. I was inclined to think they would if the courts allowed them to, yes.

Q. You purchased a stock interest first in the Citizens' Company, didn't you?

A. Yes.

Q. Wasn't that purchased subject to a bonded indebtedness?

A. And a floating indebtedness as well.

Q. And what was the amount of the bonded and floating indebtedness at that time?

A. The bonded indebtedness was $2,665,000, the floating indebtedness not quite a million. I would say here that it was not very clearly ascertained just what the floating indebtedness was until a little after our purchase of the stock because of some claims. There were some claims that had not been proven.

229 Q. Then, what am I to understand when you state that the cost of the property originally, before you put in any equipments, was $3,600,000?

A. Exclusive of the floating debt.

Q. Included in that $3,600,000 was the $2,600,000 of bonds?

A. And what we paid for our stock, but not the floating debt.

Q. So your stock really cost you about a million of dollars?

A. The stock cost about a million of dollars.

Q. And you assumed the floating debt?

A. We knew of the funded debt of $2,265,000, and the floating debt was in addition—we didn't know of that—making altogether $4,600,000.

Q. The funded debt that you assumed when you purchased this $2,600,000——

A. (Interrupting.) $2,665,000.

Q. Has any of that been liquidated?

A. No; enough of the blanket mortgage at its face value has been set aside to meet it at maturity or sooner.

Q. So that the mortgage indebtedness on the property, when you purchased it, really stands there today?

A. Plus the additional mortgage we have put on it since.

Q. You say you have sold $3,335,000——

A. (Interrupting.) $4,355,000.

Q. (Continuing:) —of bonds at eight cents on the dollar?

A. For which we have received pay for $3,335,000.

Q. How much of that money has gone into this construction since the first of January last?

A. All of it has gone into construction and the payment of the floating debt, except the $3,000,000 we have on hand, and we have

incurred liabilities even in excess of the $300,000 which we still have remaining.

Q. Has there been any additional issue of stock?

230 A. None.

Q. How much stock is there out now?

A. One million and a quarter dollars of stock.

Q. That is held by the parties who invested with you about a year ago?

A. All of it except one hundred thousand dollars, which is held by parties who invested with you.

Q. Have the original investors who made the investment with you about a year ago received any bonds for their investment?

A. Not a bond.

Q. Is it not true that yourself and your associates who purchased the stock last fall——

A. (Interrupting.) You said received "bonds;" I suppose that is what you meant?

Q. Take me literally.

A. Yes, that is what I do.

Q. They purchased all of the bonds that have been issued under the blanket mortgage, issued this year?

A. It is true that R. T. Wilson & Co., who is one of the parties interested in the original purchase of the stock purchased all of the bonds, except those set aside to meet the underlying bonds; that is, he purchased at eighty cents on the dollar, $4,335,000 of bonds, and he has paid the company for $3,335,000 of bonds.

Q. And he holds those bonds now, does he?

A. Unless he has disposed of them. They were delivered by the company to him. What disposition his firm has made of them I don't know.

Q. You said underlying bonds, what do you mean by that?

A. The underlying $2,665,000. An equal amount of the new mortgage was set aside to them. These Mr. Wilson did not purchase; they are in the hands of a trustee.

231 Q. They are to liquidate the original funded debt?

A. That is it.

Q. Is there only $2,600,000 reserved for that purpose?

A. $2,665,000, which is the face value of the new bonds put against the face value of the old bonds.

Q. When you knew that the new bonds were only worth in the market eighty cents on the dollar, why didn't you reserve relatively the same amount of bonds to liquidate the funded debt of the old bonds?

A. It would be hard to give you the course of reasoning that brought us up to that. It was my judgment at the time that that was sufficient, and I still think so.

Q. You didn't expect that the holders of the original bonds would accept these new bonds at par, did you?

A. I expected, after we had gone along and consolidated, that the seven million dollars of bonds would be worth par; we would be

able to sell them at par; we would be able to pay off the other bonds at par.

Q. You were speculating on the future?

A. Yes, it is a habit we have, and, I suppose, the attorneys in the railroad business have imbibed that habit.

Q. You knew of the construction from time to time of the tracks and power-house and equipments, this season, of the defendant's railway?

A. Yes.

Q. And the construction of your lines have gone contemporaneously with theirs?

A. Yes; a little faster, that is all.

Q. You did not commence quite as soon as they did, did you?

A. I think we commenced a little ahead.

Q. To lay track?

A. Not to lay track, but to do some other work.

Q. So that this investment that you have made of over three millions, this year, in new equipments, new power-house, new
232 cars, etc., has been made with the knowledge that the defendant, The Detroit Railway, had a franchise and was constructing its line of railway at an expense of a great many hundred thousands of dollars in the city of Detroit?

A. Our investment to this large amount represents our faith in ultimately defeating you in this law suit. This law suit was pending against you then.

Q. You pinned your faith entirely upon this law suit?

A. Yes, and some hope of nickels as well.

Mr. FLOWERS: I think the better way would be to answer the question.

A. I will try to. But he was putting a lot of conclusions in my mouth, and that had to answer.

Q. What are the gross earnings of the Citizens' Company's lines per month now?

A. In June it was $106,000. I will have to give it to you from recollection.

Q. Can you give us October?

A. October was ninety thousand and something, a little falling off from June.

Q. Do you mean ninety thousand dollars?

A. $90,000 for the month. It was very close to that, I don't remember now whether it was a little over or a little under; a little over, I think. During the month of October we had a number of lines torn up, as you know. We averaged over four lines out of business during that month.

Q. Your lines are now substantially in operation?

A. All but two, and we are short probably fifty or sixty cars, which still handicaps us. Notwithstanding that we have taken in more money than we did a year ago by from three hundred to a thousand dollars a day.

Q. Do you keep a daily average of the number of passengers carried?

233 A. Oh, yes.

Q. Can you give me an approximate estimate?

A. They are very large figures, and I don't carry them in my head.

Q. Can you give it to me approximately?

A. On today's business?

Q. On today's business.

A. I can approximately. Our receipt this month will be $95,000; the average receipts from paid passengers, 4.22 or 4.24; including the transfers, 3.80 to 3.85.

Q. How do you figure the reduction because of transfers?

A. We count a transfer as carrying two passengers.

Q. Are you figuring that it costs you something to make a transfer of passengers?

A. Undoubtedly. In the first place we have the risk of getting off and on once. In the case of a transfer it doubles that, and we carry them a longer distance and multiply the chances of accident.

Q. But the actual power to carry the transportation of your line, and the actual attendance of employés is not increased by reason of the transfer at all, is it?

A. Oh, yes, it certainly is. It requires more cars, more power, more employés, to carry people longer distances. That must be true.

Q. Can you give me now approximately the average daily passenger traffic.

A. Only by dividing that by thirty. I have it more in my head by months than by days. I have no objection to giving you the actual figures from our books if you want them.

Q. I would like to have you give the average daily traffic of the lines as they were when you purchased them, say last October, the average daily traffic for June of this year when you say many of your lines were being constructed and out of operation——

234 A. (Interrupting.) Not in June, later.

Q. And the average daily traffic now. I would like to have you give that if you have no objection.

A. I can say to you it has varied very little from $106,000 to $90,000. It has been a variation due to the changes of weather, and an increase in receipts has been shown steadily with the exception of one month, when we were torn up more than an another, when we showed a thousand dollars less than the year before. But excepting for that time it has been a steady gain. It is showing a gain today notwithstanding the shortage of cars.

Q. As a matter of fact several of your lines, like Woodward avenue, are greatly pressed for want of cars?

A. That is true.

Q. Almost double the number of cars could be operated?

A. Oh, no, I think not. I would say twenty-five per cent. on Woodward avenue. We have not let Woodward avenue suffer as much as some of the others.

Q. What per cent. of cars should be added to your lines to complete your equipment to the best in the country?

A. Twenty-five per cent. of additional cars is needed; we will probably put on thirty per cent.

Q. How many cars are you operating?

A. We are operating 130-odd motor-cars today and probably twenty-five trailers.

Q. Then you would add thirty to forty more cars?

A. No. Thirty or forty would be twenty-five per cent. I think it figures forty per cent. figuring in trailers.

Q. Have you additional cars on hand besides the ones you repaired?

A. I have a great many open cars and horse cars used as trailers.

Q. Are you converting them into electric cars?

235 A. The open cars are electric cars now. The horse cars are being converted into large cars by splicing, and we are buying a large number of new cars. They are coming in at the rate of about two cars a day; we are getting them in at the rate of about fifteen a week.

Q. Do you not think that when you have added to your car service your receipts will relatively increase?

A. I think so.

Q. Then your traffic and gross receipts have continuously increased, notwithstanding your increased construction?

A. With the exception of one month, yes.

Q. What month was that?

A. September, I think.

Q. I would like to have you give, and you may send it up to the stenographer, who will enter it here as your testimony given now, the passenger traffic, we will say, for the last five days of October, 1894, the last five days of June, 1895, and the last five days of October, 1895?

A. Will you give us the same thing?

Mr. CORLISS: We will; we can't give it prior to our starting, of course.

Mr. BAKER: We will give you the whole three months, the exact figures.

WITNESS: I have offered to exchange daily reports with Mr. Everett, if he would, but he has declined so far.

Q. When you purchased the lines of the Citizens' Company you stated that the only lines operated by electricity were Woodward, Jefferson and Mack; how many miles of electric line were embraced in those lines?

A. It was a sort of a half-way equipment. The motors were very poor and they had a power station that was almost worthless, cars that had to be remodeled, having been used and most of the track had to be thrown away.

Q. The entire of Jefferson and Mack Avenue track was substituted with new?

236 A. Yes, Woodward avenue was pretty fair, but it had to be built from the crossing out.

Q. Of course I refer to the lines inside the city limits?

A. There was a mile and a half on Mack, two miles and a half on Jefferson and two and a half on Woodward—that may be three instead of two and a half.

Q. The rest of the lines were operated by horses?

A. Except that just before I took hold, and under my direction Grand River was equipped.

Q. Nearly all of the tracks on the other lines were old strap rails, were they not, with the exception of Grand River?

A. Nearly all. There was some good construction on Grand River and Gratiot and some on Michigan near the Cadillac.

Q. How many miles of track, such as it was, was in existence at the time you purchased, inside the city limits?

A. Seventy-odd miles.

Q. How much of that track have you had to relay new?

A. I have relaid fifty-odd miles of it, and I have probably ten miles that would do, and have yet to do five miles.

Q. What in your judgment was that seventy miles of old track worth when you purchased it, for street-car traffic?

A. Do you mean strap rails, stringers, and cobblestones?

Q. Yes, as you purchased it?

A. It was worth more than the cost of taking it out.

Q. How much?

A. I think a man would lose money if he bought it for a hundred thousand dollars and paid for taking it out.

Q. What was the cost of your new track equipment per mile, approximately?

237 A. What do you mean by new "track equipment"?

Q. I mean a mile of single track laid down, of the character of rail you used this year, including the expense of paving, etc.

A. You don't include the overhead equipment?

Q. No.

A. And you don't include the car equipment?

Q. No.

A. $20,000 was the lowest and about $26,000 was the highest. It averaged about $23,000.

Q. Per mile?

A. Per mile of single track.

Q. In October, when you purchased the Citizens' road, how many cars had they that you have been able to use or utilize in the equipment of your lines without reconstruction?

A. If you mean by reconstructing, the putting in of new motors, none.

Q. I am not referring to motors; I refer to car bodies.

A. Without doing anything but painting and the ordinary repairs, ninety-four cars; fifty-two open cars and forty-two closed cars that we re-equipped with electricity.

Q. Without reconstruction?

A. Without reconstruction.

Q. How many cars had the old company, all told, when you purchased?

A. In addition to those, they had eighty-two open horse cars. I don't remember the number of sixteen-foot horse cars; it has gone out of my mind.

Q. Have you been able to utilize any of those open horse cars?

A. We have not, but probably will be able to utilize some of them next summer, either by putting motors under them for some of the smaller roads or lengthening the cars in some way so they will be as large as the others.

238 Q. What was the value of the cars at the time you purchased?

A. I don't know.

Q. Can you give us an approximate idea?

A. Well, value is a figment of the mind, you know. It depends on whom you could find to buy them.

Mr. FLOWERS: What were they worth in the street-car business?

A. To put them out and sell them?

Q. Yes.

A. I think you could get almost nothing for them. I have sold some of them for fifty dollars; I have given some of them away. I have utilized some of them that were as good as the bodies of some that cost us twelve hundred dollars.

Q. How many horses did they have?

A. Nearly two thousand.

Q. They have been disposed of?

A. All but a couple of hundred, at from two dollars up.

Q. Up to how much?

A. Oh, I think we sold you one for ninety dollars; that is the best price we got, and we killed him for you.

Q. You didn't sell him to me.

A. To your company.

Q. Is it not true that you have had, with the exception of the Woodward Avenue and Jefferson Avenue car barns, where electricity was already established, to construct new car barns throughout the different lines?

A. We have had to construct five new car-houses.

Q. What were the old ones that were being utilized on the different lines, like Baker for instance, worth?

A. They were generally situated on ground a little too near the center of business; more valuable than was necessary for that purpose and not so convenient as car-houses located at the end

239 of the road would be. All except the ones you mentioned on Woodward and Jefferson and the one on Grand River avenue were of a character which would not make them very valuable; cheap frame buildings, but they occupied rather valuable land. I must make another exception, the power-house property, which was an old stable on Antoine street and was a brick building, and the office building was also a brick building, No. 12 Woodward avenue, other than that their character was generally cheap sheds.

Q. Does the railway own the building on Woodward avenue?
A. Yes.
Q. Were any of those buildings on leased lands?
A. I think one or two small sheds—additions to them.
Q. Baker street was entirely on leased lands, was it not?
A. Oh, no.
Q. Was that land owned by your company?
A. Yes.
Q. What have you done with the old electric power plants they had?
A. Nothing as yet. We intend to dispose of the machinery and property.
Q. Of what value is it?
A. The property? I am not an expert on that.
Q. I mean the equipment part of it, the electrical part of it, the engines and boilers?
A. The engines are good, the boilers are fair, the generators are fair. It would just depend on whether we could find any one who wanted a plant of that size, who was too poor to buy a new one, and we could sell it to them at a fair price; we may probably hold it for that chance of sale.
240 Q. What is the difference between cost of operating street-car lines with horse-power and with electric power, relatively?
A. You can carry them very much further, at higher speed and with more comfort and at smaller cost with electricity.
Q. Can you give us from your experience and knowledge anything definite as to the difference in cost of operation?
A. It is very difficult to make a comparison because the horse cars usually don't reach out as far and do not begin to carry the traffic that is presented. As a rule, and generally speaking, a horse railroad could be operated for about eighty per cent. of its gross receipts; a very good electric road ought to be operated at sixty per cent. or less.
Q. Is it not true that the good systems of electrical street-car lines in cities having a population of 250,000 and upwards are operated for less than fifty per cent. of their gross receipts?
A. I think it is not true.
Q. You think it would run from fifty to sixty?
A. If you take the average as you find them, very much over sixty, but the very best operate for less than sixty. Those companies who think they operate for fifty and talk about it probably don't make allowance for a sinking fund to take care of the depreciating machinery they have, or for the renewal of motors, etc.; but on a fair system of book-keeping sixty per cent. is about right.
Q. You have issued $7,500,000 in bonds?
A. No.
Q. $7,000,000?
A. Yes, sir.
Q. In addition to the stock?
A. In addition to the stock.

241 Redirect examination.

Mr. BAKER:

Q. They have introduced a number of contracts which have been entered into by your company with the Detroit railway since the Detroit railway has been in existence. Those contracts in the main, I think, provide for the joint occupation of tracks on certain streets, and their purpose seems to be to establish some ground of acquiescence or laches upon your part; for that reason I desire to inquire what, if anything, was said or understood about the case you have in court, when those contracts were entered into.

Mr. CORLISS: That is objected to as immaterial and incompetent and not the best evidence, the contracts themselves being the best evidence with reference to the matters between the parties, and not the statement of counsel embraced in the question as to the supposition and intention of the defendant.

Q. What is the fact in regard to that?

A. We made a number of contracts, and, without exception, that clause was inserted, saving all rights to each of the parties on account of the pending litigation. Even in some of our correspondence it was inserted. I had particular charge of that, and I was very careful.

Q. As you understand it, there is such a provision in every one of the contracts?

A. In every one of them without exception.

Q. There is no question about the verbal understanding?

A. No; and the best witness on the subject is Mr. Corliss himself.

(Signed) TOM L. JOHNSON.

242 Subscribed and sworn to before me this 3rd day of December, 1891.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner.

The hearing was then adjourned until 2 o'clock p. m. November 20th, 1895.

JERE C. HUTCHINS, a witness produced on behalf of the complainant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Examined by Mr. BAKER:

Q. Where do you reside?

A. In Detroit.

Q. How long have you lived here?

A. Nearly a year.

Q. Where did you formerly reside?

A. At Memphis, Tennessee.

Q. What was your business?

A. Except for an interval of about five years, I have been directly connected with transportation business for 25 years.

Q. What has been your street railway experience?
A. One year in Detroit.
Q. Had you any street railway experience in Memphis?
A. Not directly, no, sir. I was connected with steam railway transportation previously.
Q. And you have been connected with the Detroit Citizens' Street Railway Company here?
A. Yes, sir.
Q. In what capacity?
A. I am vice-president and treasurer of the company.
Q. You know the Detroit railway, the new company?
243 A. Yes, sir.
Q. Do you remember when the Detroit railway was getting an ordinance through the common council?
A. They were doing that when I came here last November.
Q. What did you say your official position with the Citizens' Company was?
A. Vice-president and treasurer.
Q. As vice-president of the company, did you have occasion to cause a number of notices to be served upon the city of Detroit and the Detroit railway?
A. I did.
Q. I refer to the notices set forth in the bill of complaint in this cause, in which the Citizens' Company claimed the first option on the right to construct new roads and extensions?
A. I served such notices.
Q. Can you state what the attitude of your company was in regard to these new roads at that time, with reference to your willingness or unwillingness to build new routes and extensions?
A. We were anxious and willing to do it.
Q. You have become familiar with the street railway situation in the city of Detroit?
A. I think so, sir.
Q. And with the lines of the Detroit railway?
A. I think so.
Q. Will you state from your knowledge of the street railway business, whether the routes laid out by the Detroit railway are most advantageously laid out for the accommodation of the territory, the lines of that railroad are supposed to accommodate?
A. As a separate system, they are probably laid out to as
244 good an advantage as possible. I think they might have been laid out to greater advantage in connection with the existing lines.
Q. Will you tell us what you mean in regard to that? Explain how you think they could have beon better laid out if they had been laid out with reference to existing lines?
A. There are a number of main lines that run through diagonal streets making near cuts to the different centers, and the new lines built by the Detroit railway might have been connected with those lines and brought into the center to still better advantages probably in several instances.

Q. You have one line of the Citizens' road known as the Myrtle Street line?

A. Yes, sir.

Q. That is a line which runs west from Grand River avenue?

A. Yes, sir.

Q. And there is an amount of territory between Grand River avenue and Michigan avenue that is traversed by the new lines of the Detroit railway?

A. Yes, sir.

Q. How would you have accommodated the same territory by extensions of the system of the Detroit Citizens' Street Railway Company?

Objected to as immaterial.

A. I think the illustration you give answers the question. The Myrtle Street line connects with the Grand River line, and the travel from the Myrtle Street district is brought directly down over the Grand River line to the center of the city, and just so of the lines diverging from these trunk lines. Those lines could have been built without the necessity of angling around as they do to get to the center of the city.

245 Q. You speak of the lines of The Detroit Railway Company, the defendant. You mean as they do?

A. As the Detroit Railway Company does.

Q. I don't suppose your company was willing to build these lines upon the terms of the Detroit Railway grant?

A. No, sir.

Q. That is, your company was willing to build new lines upon the terms of your own grant?

A. Yes, sir.

Q. You expressed a willingness in some of these notices to build the proposed lines exactly as they were laid out in their ordinance. Is that so?

A. If the city had required them to be built as laid out in the ordinance, I think we would have built in that way, although I think we could have convinced the city it would have been better to build them on our plan.

Q. That is, if the city had yielded to your company you would have suggested improvements in the system?

A. Yes, sir.

Q. From your knowledge of the street railway business and the street railway situation here in the city of Detroit, what is your opinion as to the relative merits of the Detroit system as laid out, and an entire system under one management such as would be possible by an extension of the lines of the Detroit Citizens' Street railway?

Objected to as immaterial.

A. I believe the interests of the community and of the company could have been best subserved by building these lines and managing them under one system and under one management.

Q. I suppose you are perfectly familiar with the operations of modern electric railway, their motive power, and so on?

A. I think so.

246 Q. Take their Fourteenth Street line as an illustration, would there be any practical difficulty—or, to put the question a little more direct—would it be practicable and feasible in the operation of such a line as that, to bring the cars directly down Michigan avenue to the center of the city, instead of going on a zigzag or angling course, such as the Detroit railway has?

A. It would have been a better line brought down Michigan.

Q. If it was all one system, is that the way it would have been done?

A. I think it would have been done that way.

Q. On the eastern side of the city there is what they call their Hastings and Beaubien Streets line. Would it be practicable or feasible to bring that line down Gratiot avenue?

A. Yes, sir.

Q. Will you state whether the lines of the Detroit railway, as they are actually laid out, encroach in any way upon the business of the Detroit Citizens' Street Railway Company?

A. They do.

Q. Will you state how they do?

A. They loop around both sides of us on Brush street.

Q. That is, your company has a line on Brush street?

A. Yes, sir; we have a line on Brush street, and the Detroit railway has a line on each side of Brush street, and they naturally cut into our territory and encroach to a certain extent on that line. At various other points they reach into territory already provided for by the Citizens' Company's lines.

Q. That is, the Fourteenth Street line and all of their lines touch territory where the people would naturally go to the Citizens' Company?

A. Yes, sir; some of their lines come very close.

247 Q. Some of their lines come very close to your lines, don't they, making a zigzag?

A. Yes, sir, they cross us at various points in zigzagging downtown.

Q. We asked Mr. Johnson some questions yesterday that he was not able to answer, because he didn't have the figures with him. I will now ask you what was the total number of passengers carried by your company, exclusive of your own employés, in the month of January, June and October of 1894, and in the same months in 1895.

A. I can answer as to the aggregate number of passengers carried in 1895, but I cannot answer as to the number carried in any particular month of that year, for the reason that our auditor left town last night, and the book in which that information is kept was locked up and I couldn't get access to it today. I can answer as to the total number of passengers carried in 1894.

Q. How many were there?

A. I will refer to a memorandum. Do you want, too, the transfers?

Q. Separate the transfers.

A. I can only answer as to the aggregate number carried.

Q. Certainly, but give us the aggregate number carried.

A. 23,771,872 passengers carried during the year 1894.

Q. Were those passengers who paid?

A. Those were passengers who paid.

Q. How many transfers were there?

A. 3,197,750.

Q. When did the transfer system commence?

A. There has been a transfer system in vogue all the time.

Q. All through 1894?

248 A. All through 1894.

Q. Did you, in addition to that, carry a large number of employés?

A. We carried 776,774 employés, who rode on employés' tickets.

Q. And who didn't pay?

A. Who didn't pay.

Q. Those didn't pay anything.

A. They paid nothing. They were employés going to and from their work and riding as employés when off duty.

Q. Can you give us the total number of passengers carried in the month of June, 1895?

A. I can for January.

Q. If you have got January, all right. If you can't give us the figures for 1895, say so. Take January first, then?

A. For January, 1895, 1,952,742 revenue passengers.

Q. How many transfers were there?

A. 255,369.

Q. Do the transfers represent pay?

A. No pay is received by the company for transfers.

Q. How many employés did you carry in January?

A. 65,553.

Q. These figures represent the different roads?

A. Certainly.

Mr. HATCH: That don't represent the conductors and motormen on the cars?

A. Not when they are on duty. It represents conductors, motormen and all other employés when off duty riding when they are going to and from their work.

Mr. BAKER:

Q. Give us the figures for June, 1895.

249 A. There are more people carried in the summer months than in the winter. In June we carried 2,404,169 revenue passengers.

Q. How many transfers?

A. 611,222.

Q. How many employés?

A. 92,700.

Q. Give us the month of October, 1895.
A. 2,139,595 revenue passengers.
Q. How many transfers?
A. 516,603.
Q. How many employés?
A. 86,783.
Q. Can you tell us what was the average rate of fare the company actually realized from what you call revenue passengers, that is, if you have it figured there?
A. The average revenue for paid passengers varies per month from 4.19 to 4.24.
Q. Is there any way of estimating the amount of business the Detroit railway draws from your company?
A. I know of none, sir.
Q. The business of your company, I suppose, has increased as you have improved your lines and as the city has grown?
A. Considerably.
Q. Would it in your opinion have still further increased if the Detroit railway had not been built?

Objected to as incompetent and immaterial.

A. It would have done so.
Q. Mr. Flowers suggests you would not have improved your lines. Is that true?

Same objection.

A. I don't think it is true.
Q. Your company has spent a large amount of money in putting in electricity on lines all over the city, hasn't it?
A. Yes, sir.
250 Q. And it is nearly completed now?
A. It is approaching completion, yes, sir.
Q. Since you have been here and have been familiar with the work, have the common council granted extensions of your system?
A. It has.
Q. Of what character?
A. It authorized double in place of a single track on Trumbull avenue, a double in place of a single track on the Baker Street line, the same on the Mack Avenue line. I suppose that is what you mean by extensions?
Q. No. What I mean is, have they granted any new rights or extensions of old rights? I don't merely mean the doubling up of tracks?
A. They have granted us joint rights on Porter and Abbott streets with the Detroit railway.
Q. Outside of that, what extension of new routes have been granted?
A. None.
Q. None whatever?
A. None.

Q. I don't suppose quite all the city is occupied by street railways yet? There is still some unoccupied territory?
A. Yes, sir.
Q. Both in the eastern and western part of the city?
A. Yes, sir.
Q. If both these roads belonged to the same system could any saving be made in operating expenses?
A. Yes, sir.
Q. In what direction?
A. The power could be applied from one power-house and there would be a saving in general expenses.
Q. And in the salaries of officers?
251 A. In the salaries of officers and employés and in various ways.
Q. So that the service could be more economically rendered under one system?
A. Unquestionably.

Cross-examination.

Mr. HATCH:

Q. What salary is paid your president?
A. $10,000.
Q. What salary is paid your vice-president?
A. By the company?
Q. Yes.
A. $3,600.
Q. Does that include the services of the treasurer?
A. Yes, sir.
Q. What salary is paid the secretary?
A. $1,500.
Q. What salary is paid the superintendent?
A. $200.
Q. A month?
A. Yes, sir.
Q. These other salaries you speak of of the president, the vice-president and secretary are by the year?
A. Yes, sir. The superintendent of the road gets $2,400 a year.
Q. You issue tickets which are good for passage on your lines at the rate of eight for a quarter, good for passage between certain hours?
A. Yes, sir.
Q. What hours?
A. From 5.30 in the morning until 7 o'clock in the morning; that is a passenger may board a car at any time between 5.30 and 7 o'clock and be carried to his destination.
252 Q. Give us the afternoon hours.
A. From 5.15 to 6.15 in the evening.
Q. Can you give me the number that rode on those tickets for any of the months of the year 1895? Have you got the data before you?

A. Yes, sir, I think I have. I will see, I am not certain. (Witness refers to memorandum.) In January, 1895, 13.13 per cent. of all the pay passengers were carried on eight-for-a-quarter tickets.

Q. That leaves out employés?

A. That leaves out employés and transfers.

Q. Now, speak of the month of July.

A. 12.36 per cent. of all revenue passengers were carried on workingmen's tickets.

Q. By workingmen's tickets you mean eight for a quarter?

A. Yes, sir.

Q. Give me the same figures for August?

A. 11.63 per cent.; for September, 12.37 per cent.; for October, 14.23 per cent.

Q. All other passengers on your lines are carried on tickets sold at the rate of six for twenty-five cents, or else on a straight five-cent fare?

A. Yes, sir; that is, all passengers outside of transfers, all revenue passengers.

Q. Can you give me the amount of cash fares, straight five-cent fares received in any month during 1895?

A. Yes, sir.

Q. Do so, if possible, for January.

A. The percentage of all passengers carried in January for cash fares was 20.43 per cent.

Q. Give us the same for July.

A. 28.94 per cent.

Q. For August?

A. 28.03 per cent.

253 Q. September?

A. 30.39 per cent.

Q. October?

A. 26.79 per cent.

Q. As you have it before you, you may give me the percentage of revenue passengers riding upon tickets which were sold at the rate of six for a quarter, commencing with January and answer for each of the same month.

A. January, 63.15 per cent.; July, 58.70 per cent.; August, 60.34 per cent.; September, 57.24 per cent., and October, 58.98 per cent.

Q. Can you give us any corresponding data for the year 1894?

A. I cannot by months.

Q. Take it by the year. Give us the percentage of cash fares and six-for-a-quarter fares and eight-for-a-quarter fares for the year 1894 together.

A. Cash fares for 1894, 23.21 per cent.; six-for-a-quarter tickets, 63.15 per cent.; eight-for-a-quarter tickets, 13.65 per cent. I can give you the percentage of transfers for that period if you want it.

Mr. FLOWERS: We don't care anything about it. While we are at the question of figures, will you give us the amount of revenue passengers carried for July, August, September and October, 1895? You have already give June.

A. We carried 2,486,179 revenue passengers in July; 2,347,877

revenue passengers in August. We carried 2,070,655 in September, and October you have. The percentage of transfers are about twice what they were at the beginning of the year.

Mr. HATCH:

Q. When did you introduce your transfer system as it now prevails?

A. In June.

Q. You have given us your opinion of the relative ad-
254 vantages that would be secured had all these systems of railroads been put in by one company; do you refer to the advantages to the company, or the advantages to the public?

A. Both, sir.

Q. Suppose a man is at the crossing of Fourteenth avenue and Grand River avenue and desires to reach the Chamber of Commerce, what advantages will he have if he goes over your road from those which he would have if he came over the defendant's road?

A. As your line is now built, you would land him directly at the Chamber of Commerce and we would land him about a block from it.

Q. There would be a saving of time, is that it?

A. No. He would have a little further to walk if he came over that line.

Q. Over which line?

A. Over our line. He would have the advantage of that one block over your line as it now runs to State street.

Q. I don't care about that. What would be the advantage to a person starting from a junction of Fourteenth and Grand River avenues, who desired to reach the corner of State street and Woodward avenue, if he came over your line in preference to going over our line?

A. He would come more directly.

Q. There would be a little advantage in time?

A. Yes.

Q. How much?

A. I could hardly tell you; there would be some little advantage in time.

Q. Which way would the advantage be in fare, if he rode between the hours of seven in the morning and five o'clock in the afternoon?

255 A. I think that would depend upon how much taxes the man paid.

Q. Oh, answer the question if you can.

A. I believe your ticket rate is eight for 25 cents?

Q. Eight for 25 cents for the day and six for a quarter at night. So a person so circumstanced as to desire to make that trip would effect a saving in expense if he came over the Detroit railway line instead of over the Citizens' line?

A. Yes, sir.

Q. Take that part of Fourteenth avenue lying between Grand River avenue and Locust street, don't people who reside along that

portion of the avenue get a good deal of advantage by reason of the Detroit line being located there over what they would have if it had not been built?

A. I think so in that case. We might have approached the territory in some other way to still better advantage though.

Q. Is not all the territory touched by the lines of the Detroit railway south of Grand River avenue better accommodated so far as the people are concerned who reside there than your lines would accommodate them on Grand River avenue?

A. Why, certainly. You get out into territory that was not occupied by any railway at the time you built and those people are accommodated by the railways you have built.

Q. Isn't the relative number of inhabitants accommodated by the different lines dependent upon the number of dwellings they run past, or very largely at least?

A. Certainly by the number of dwellings they pass near.

Q. Then if these zigzag lines of the Detroit railway are longer than they otherwise would be, they accommodate more people by reason of that track, don't they?

256 A. Oh, I don't know, I doubt that.

Mr. FLOWERS:

Q. What lines of the Citizens' Railway Company accommodate the people living upon Fourteenth avenue north of Grand River and south of Grand River?

A. North and south?

Q. Take the north first. What lines of yours have accommodated the people living north?

A. The lines that would have accommodated them would have been the lines we should have built if you hadn't built them.

Q. What lines of your company for the last ten years have accommodated the people living on Warren avenue east or west?

A. My information in regard to the company does not extend back ten years. It extends back only about a year, when my associates came into possession of the property.

Q. Do you know of any lines of the Citizens' Company that have been abandoned during the last ten years?

A. No, sir.

Q. Then the same lines that accommodated them a year ago would have accommodated them ten years ago, if they had been in existence?

A. I don't think that they would have accommodated them.

Q. They didn't accommodate them, did they?

A. Not that I know of; I don't know anything about the street railway company ten years back.

Q. At the time the franchises were obtained, the people living on Warren avenue and all the territory adjacent thereto, were not accommodated by the Citizens' Railway Company, were they?

A. I think that is very true. Of course, we cross Warren avenue in quite a number of places.

257 Q. That is, people could get to your lines by walking from half a mile to two miles?

A. By walking from 50 feet to a greater distance.

Q. And they would only be accommodated upon the theory that it was healthy for people to walk, would they?

A. I fully agree with you that the accommodations did not exist at the time your company began to construct its lines.

Q. Oh, you think they would have existed if you had been allowed to live long enough in Detroit to have accommodated yourself to them at a five-cent fare?

A. We have built a great deal of railway in Detroit this year.

Q. You didn't build any new lines, did you?

A. It isn't our fault that we didn't.

Q. What new lines did you want to build?

A. We would have built all the lines you did, or lines occupying the same territory practically.

Q. When did you find out you would do that? After the Detroit railway got their franchises, or before?

A. We gave notice of that after you applied for the franchises.

Q. After the application was made?

A. The present management of the Citizens' Company began just about that time.

Q. You didn't know of any instructions to give notice until that time?

A. We had nobody to give notice until then.

Q. Did the board of directors of your company ever act upon or give direction as to those notices?

A. Yes, sir; I believe they did.

Q. When?

A. At the time the notices were given.

Q. Did you give notice you would build lines upon those
258 streets for a fare at the rate of eight tickets for a quarter?

A. No, sir.

Q. Didn't want to, did you?

A. No, sir.

Q. Don't want to run a line at that rate, do you?

A. No, sir.

Q. Don't think it would pay, do you?

A. No, sir; not under our franchise.

Q. It wouldn't have paid under the horse-car system, would it?

A. I don't think it will pay under any sort of system.

Q. You think the Detroit railway will lose money, don't you?

A. The Detroit railway has some advantages in another direction, as to exemption from municipal charges that I don't know——

Q. (Interrupting.) I am speaking of the same kind of franchise.

A. I don't think they are under the same franchise.

Q. I am not speaking of any franchise except the franchise they have. You think they will lose money, don't you?

A. In my judgment, you will.

Q. Upon what do you base that judgment, upon the number of passengers carried and the cost of operation?

A. I base it upon more general information. I base it on the fact that after years of study of the situation in all the principal cities of the world, a higher rate of fare has been found necessary.

Q. Found necessary for what purpose?

A. Necessary to pay for facilities for giving adequate service.

Q. Do you base that judgment upon the operating of electrical or horse roads?

259 A. Both.

Q. When did you put in these years of study in connection with these two matters?

A. I speak of the study of the subject by the cities and the companies that have established these rates, not of my own study.

Q. You get that from information and second-handed?

A. I get it from knowing the rates of fare in all the principal cities of the country.

Q. Were you ever connected with a horse railroad?

A. None but the horse railways run by the Citizens' Railway Company, until we ran the 1,800 horses off the streets recently.

Q. Do you know anything about the relative cost of operating an electrical road and a horse road, say to carry 1,000 passengers?

A. I don't think it could be determined by any living man what the exact cost is of carrying passengers on an electrical railroad, looking forward for a number of months or years.

Q. Don't the records show that the average number of people who ride is about the same from year to year and month to month?

A. Our records show a very creditable increase in the number riding.

Q. Isn't there any way of the amount of running expenses in proportion to the receipts?

A. Some two years ago, or a little more——

Q. (Interrupting.) Answer the question.

Mr. BAKER: You answer it your own way.

Mr. FLOWERS: Well, go ahead.

A. Some two years ago, or a little more, there was a large amount of money spent by the Citizens' Railway Company in the purchase of machinery for a power-house and in the purchase of motors

260 to operate its cars through the streets. It has been necessary to discard all that machinery and all those motors because they are out of date.

Mr. BAKER: That is a dead loss then that falls on the business?

A. Yes.

Mr. FLOWERS: When you bought this road you knew that, didn't you?

A. We knew it, and there is no man can tell but that other improved machinery will come in shortly.

Q. Yet knowing that you paid four and a half million dollars for property that was substantially worthless, didn't you?

A. We didn't buy any property that was substantially worthless.

Q. Was there any value to the old barns?

A. Certainly.

Q. Except the land?
A. Certainly, the machinery is of some value.
Q. I am speaking of the old barns.
A. The most of them are of no account, some of them are worth something.
Q. Were there any old rails on the streets?
A. Yes.
Q. How much were they worth?
A. I could not tell you exactly what they are worth.

Mr. HATCH: Mr. Dupont told me they would not net half a million dollars. What do you say to that?
Mr. FLOWERS: A half a million of dollars? Mr. Johnson didn't say anything of the kind yesterday.
WITNESS: I would be very glad if they would sell for that.

Mr. FLOWERS:

Q. You still think there is no way by which a new plant like yours or like the Detroit railway can tell how much it will cost to run their road by electricity?
231 A. It can be told exactly what it costs to-day, but for next month or next year you can't tell how much it will cost to run it by electricity.
Q. If anything in the way of improvements is put in, that would be put in for the purpose of cheapening and bettering the system, would it not?
A. Yes, for bettering the system, certainly, but there might come a necessity for improved methods that could not be controlled by the company.
Q. That necessity exists in all business, don't it?
A. Certainly, still electricity and electrical devices are as yet very much in their infancy.
Q. If they improve at all, they will improve for the better.
A. Certainly; we are in an experimental age.
Q. And appliances if bought will be bought for the purpose of cheapening and bettering the system, will they not?
A. That would be the purpose of them, certainly.
Q. In other words, if a system is good, you would not put in any new system to make it run more expensively, would you?
A. If it should be demonstrated that some system, some storage-battery system, for instance, is practicable, the cities might immediately order off the streets all the overhead wires and trolley poles and all those things, and order the other system in its place.
Q. How could they order it in the face of a franchise recognizing the existence of a certain power?
A. I suppose they would have that authority under any franchise that you or we have.
Q. The truth about the matter is this, isn't it, that with the street-car business, the same as with any other business, it must be run with certain risks?
A. Certainly.

262 Q. And the object of a street-car company is to run at as great a profit as it can and at as great a cost to the people as possible, isn't it?

A. At as great a cost to the people?

Q. Yes, that is, for the benefit of the company. In other words, you are not in the charity business?

A. Everybody running a street railway is supposed to run it on business principles and for the purpose of making something out of it.

Q. Your receipts since the operation of the Detroit railway began demonstrate to you, don't they, that that road has not injured your business?

A. While our receipts have increased under the improved facilities for travel, I believe they would have increased to a greater extent if the Detroit Railway lines had not been built; and they would have increased to a greater extent if the lines built by the Detroit railway had been built as a part of the system of the Citizens' railway.

Q. Has your business been injured by it?

Mr. BAKER: Object to that on the ground that he has answered it. The answer shows it has been injured. Of course the old business hasn't been injured.

Mr. FLOWERS: Anyhow, the figures, show for it, I suppose.

Mr. HATCH:

Q. Your acquaintance with this Citizens' Company commenced at what date?

A. In November, 1894.

Q. At that time how many miles of horse-car lines did they have?

Mr. CORLISS: We showed that by Mr. Johnson.

Mr. HATCH: Very well then, that is all.

Examined by Mr. CORLISS:

263 Q. You have given the receipts of your road. Is it not true that very many of your lines during the present year have been for a period of a month or more closed to public traffic in consequence of reconstruction?

A. Yes, sir.

Q. Is it not true that the receipts per month have been greatly lessened in consequence of such construction?

A. They have been more or less affected in that way, though we have reconstructed all lines with as little interference with the traffic as possible.

Q. But some streets, like Brush street and Third, Crawford and Baker streets, have been closed for periods of two or three or four weeks?

A. Yes, sir.

Q. Is it not true that at the present time your car facilities are inadequate to the demands of your trade?

A. They are for comfortable travel. We have a few less cars than

are required for the service, because there has been some delay in getting the cars. In the meantime there are certain hours in the day when the people are crowded uncomfortably on the cars.

Q. Don't you think that in consequence of the inadequacy of cars during this summer, and the reconstruction of your roads, you have lost considerable patronage?

A. There has been no inadequacy of cars during the summer; we had plenty of cars to equip the lines.

Q. How long is it since you have wanted cars?

A. Since we put on closed cars.

Q. When was that, during the month of October?

A. About a month ago.

Q. You say your system, embracing also the Detroit Railway lines, could be operated with greater economy, because you could use one power-house, one set of officers, and other expenses; isn't that true in any line of business? Take the banking business of the city of Detroit and the same argument might be applied, might it
264 not? If the banks of the city of Detroit were all consolidated into one bank, it would require but one building and one set of officers: isn't that true?

A. I don't think it is a parallel case at all.

Q. Isn't it true of many things? Would it not be greater economy to run all steam lines of the State of Michigan under one management?

A. I don't think the cases are parallel.

Q. Or the dry-goods stores of the city of Detroit?

A. Those are not parallel cases.

Q. Do you think of any case that would be parallel aside from a street railway monopoly?

A. A street railway is altogether different from the concerns you speak of, it is subject to very different conditions.

Q. You said the same lines could cut into your traffic you thought. Do you think the cross-town Warren Avenue does?

A. Of course in crossing a number of streets we occupy, it draws some of the passengers which would otherwise ride on our lines.

Q. Is it not true that with the modern appliances of street railway traffic the people are being educated to the use of street railway accommodations very rapidly, and in consequence the patronage of street railway lines has increased very rapidly and is increasing very rapidly in all cities?

A. I think it is.

Q. And in consequence a greater number of lines are required in every city, according to its population?

A. Yes.

Q. You said from years of investigation by others and from your information gained in that way, you thought that greater efficiency could be secured with the high rate of five cents instead of
265 the low rate of fare of eight-for-a-quarter tickets; isn't it true that in nearly all of the large cities of the United States, with a population of 250,000 and upwards, where the street railway lines

are consolidated in one company, they have not been capitalized at from one to three times the actual or original cost of the properties?

A. I don't know that to be the case, sir.

Q. Isn't that so of Cleveland?

A. I don't know that it is.

Q. Are you familiar with the city of Cleveland?

A. I am not.

Q. Don't you know that that is so of Buffalo?

A. I don't.

Q. That in the consolidation of these street railway lines, in order to show the necessity of a high rate of fare, the capital stock and bonded indebtedness of these corporations has been doubled and trebled with what may be termed water, upon which an interest earning must be shown? You don't know that fact to be true?

A. I don't know that to be true.

Q. Isn't it generally claimed and stated by the same parties that informed you with reference to a five-cent fare?

A. I would say that the Detroit Railway Company, I see, have $2,000,000 of bonds and $1,000,000 of stock after spending $1,750,000 upon the construction of their roads. That may be water, I don't know, but I have no more direct information of the operations of any company than that.

Q. You were not informed of any such amount of stock and bonds being issued?

A. I was informed that it was going to be done.

Q. It has not increased the rate of fare on the Detroit railway?

A. Not as yet.

266 Redirect examination.

Mr. BAKER:

Q. When you came here there was a horse-car system in actual use all over the city, wasn't there?

A. Yes, sir.

Q. On all your lines, except the two main ones, Jefferson and Woodward avenues?

A. Yes, sir, and excepting Mack avenue.

Q. And the plant and equipment was suitable for that kind of business, wasn't it?

A. Yes, sir.

Q. That is, if you were going to run a horse-car system, you would have barns for horses?

A. Yes, sir.

Q. And that whole plant was rendered practically worthless, or comparatively worthless, from the fact that tracks had to be torn up and an entirely different system put in?

A. Yes, sir.

Q. Whatever that system cost became a total loss to the company?

A. Not a total loss, but a large loss.

Q. It involved a large loss?

A. It involved a large loss, yes.

Q. You put in, as Mr. Johnson testified, an electric plant that is up to date? Do you understand it that way?

A. I know it to be so.

Q. The most modern and best constructed electric plant that can be made?

A. Yes.

Q. You said something about the possibility in the next few years of there being another revolution in the street railway business?

267 A. I say it is altogether possible that there may be very great and very radical changes, so that all the money or a large part now invested will be lost.

Q. So that all the money, or a large portion of the money your company has put in might be lost, or a portion of it lost, if the discovery should be made of a storage-battery system?

A. Yes, sir, or something that would render useless a concern like the power-house that cost $450,000 or more.

Q. And this depreciation involved in a change is something that is incidental to the business, is one of its risks?

A. Yes, sir; certainly.

Q. On what lines do you sell the most workingmen's tickets?

A. On Woodward avenue first and Jefferson avenue next.

Q. You say the aggregate on those lines is greater than on the others. What is the percentage of the business? I suppose Woodward avenue is one of the best lines you have in the city, is it not?

A. Woodward avenue and Michigan avenue, that is, the Michigan through line and Jefferson avenue carry about the same number of passengers. There are fewer workingmen's tickets sold on the Gratiot-Michigan line than on the Woodward and Jefferson lines, and more working people live on the Michigan-Gratiot line than on either of the other two lines.

Q. Is there any way of telling with accuracy what the ultimate expense will be on the wear and tear of machinery? That is, would it be accurate at all to estimate your business upon the actual receipts and the actual running expenses for one month or a year? Is this modern plant you have got in supposed to be perpetual? Does it last forever? You said something that they didn't

268 seem to understand. You said you didn't think any man could estimate it. Of course it is easy enough to estimate the gross receipts for a day or for a year, but when you cover a period of thirty years, how will it be? Can you tell with any accuracy what the final outcome will be?

A. Nobody can.

Q. That is what you meant?

A. Yes.

Q. I suppose there is a certain amount of risk from accidents?

A. Yes, sir.

Q. You can't estimate what that is?

A. You can for a month, but you can't for any length of time.

You can know what your expenses would be for casualties for a month, but nobody can look ahead.

Q. That is, you can tell what you do pay?

A. Yes.

Q. But you can't tell what you are going to pay?

A. No.

Q. Of course, the greater number of passengers you carry, the greater the risk is?

A. The greater the risk.

Recross-examination.

Mr. HATCH:

Q. Has the president of your company within the last seven days addressed a communication to the mayor of this city, declaring it to be the purpose of your company to exact five-cent fares from passengers, except from those traveling upon tickets which are sold at the rate of eight for a quarter?

A. I think he had an interview with the mayor of the city, in which he stated that was the purpose of the company.

269 Q. Didn't he communicate that to the mayor in writing?

A. He had written his views on the subject and probably handed that written matter to the mayor.

Q. Has any action looking to that end been taken by the board of directors of your company, the Citizens' Company?

A. The matter has been fully canvassed by the directors of the company.

Q. Has not a resolution been adopted on the subject?

A. By the board of directors?

Q. Yes.

A. No, sir.

Q. Who constitute the board of directors of the complainant company?

A. Tom L. Johnson, W. L. Johnson, A. B. Dupont, Irwin Fullerton, J. F. Van Name, J. M. Edwards, J. C. Hutchins.

Q. How many of those directors are employed by the company and actively participate in its management, aside from being directors?

A. The president and vice-president, A. B. Dupont, director, is manager of the road, Irwin Fullerton, director, is auditor, W. L. Johnson is claim agent; five of the seven directors are connected with the management.

Q. What proportion of the stock of the Citizens' Company is owned by the directors?

A. I think about 4,300 or 4,400 shares.

Q. That is what per cent. of the whole?

A. There is $1,000,000 of voting stock in the company.

Q. How many shares?

A. About 4,300 of that is owned by the directors.

Q. Do you know the firm of R. T. Wilson & Co.?

A. Yes, sir.

Q. Do you know that R. T. Wilson, Jr., and the president of the Citizens' Company compose that firm?

270 A. The president of the Citizens' Company is not a member of the firm of R. T. Wilson & Co. in so far as I know.

Q. Is he interested in that business?

A. He is interested in this business.

Q. Isn't he interested in that firm?

A. Not that I know of. I don't know that he is.

Q. How many shares of stock does R. T. Wilson hold?

A. He owns all the balance of the 10,000 shares, except what I named as owned by the other directors, and about $100,000 of stock owned outside.

Q. Does he own all the balance of the $1,000,000 issued from this $430,000 you speak of? Aside from that?

A. He owns it all, except what I stated, and except that about $100,000 of stock that is owned by other parties.

Q. He was a director of that company down to the 12th of last June, was he not?

A. R. T. Wilson, Jr., was a director.

Q. Down to that time?

A. Yes, sir.

Q. Then he voluntarily resigned and Mr. W. L. Johnson was elected in his place?

A. Yes, sir.

Q. W. L. is a brother of Tom L. Johnson, isn't he?

A. He is.

Examined by Mr. CORLISS:

Q. State whether Wilson's holding of stock in the Detroit Citizens' Street Railway Company in the way you have stated has continued substantially in the way you have stated since last fall?

A. I think so.

Q. When was it that Wilson purchased from the Citizens' Company the issue of bonds that were sold to him at 80 cents on the dollar?

271 A. I cannot recollect the date, but the date is of record in our office and is of record in the office of the Detroit railway, for Mr. Pack was offered the same bonds at the same price.

Q. It was during this summer, was it not?

A. Yes, sir, this summer; I think it was July, I am not certain.

Mr. BAKER: What is that about offering these bonds to Pack?

A. Mr. Wilson bought the bonds, but they were offered to Mr. Pack at the price Mr. Wilson paid for them.

Q. Do you know whether those bonds were sold for all they would bring or not, or are you not familiar with that?

A. I certainly know they were sold for all they would bring.

Mr. CORLISS:

Q. They were not advertised in the market, were they? There was no advertisement on the stock exchange in New York, or

through any of the ordinary means of advertising the sale of bonds?

A. The matter was looked after by the people in charge with a view to getting the best price and the best price was obtained that was possible.

Q. You don't know of any advertisements made in any newspapers either East or West, for the sale of these bonds?

A. No.

Examined by Mr. HATCH:

Q. How do you know any of those bonds were offered to Mr. Pack?

A. I saw the letter addressed to Mr. Pack offering them.

Q. Signed by whom?

A. By Mr. Johnson, the president of our company.

272 Q. Do you know that the letter was sent?

A. I didn't see it absolutely sent; I am satisfied it was sent.

Q. Have you any original knowledge that it was sent to Albert Pack?

A. I know that he was also apprised through the newspapers, so I am satisfied Mr. Pack knew the offer was made to him.

Q. My question is, do you know whether that letter was mailed to Mr. Pack?

A. I did not see it mailed absolutely, I don't know of my own personal knowledge, but I know that was the intention of the management, that Mr. Pack should have an opportunity to buy the bonds and that he should be given that opportunity, and I am satisfied that the opportunity was given him.

Q. But you don't know that it was given him? You are not willing to swear to it?

A. I am willing to swear to the best of my knowledge and belief it was.

Q. You have stated that all you know about it is that you saw the letter, but don't know it was sent?

A. I don't know the letter was sent, but I saw the publication in the newspaper that it had been sent.

Q. Do you know anything else about it?

A. That is all I know on that particular point.

Mr. BAKER: I offer in evidence the ordinance of the common council of the city of Detroit approved December 27, 1862; and also the ordinance approved January 12, 1863, both of those ordinances having been passed before the ordinance of November 24, 1862, was accepted, the object being to show the condition of the ordinance at the time it was accepted.

Copies of these ordinances are hereto annexed marked Exhibits "A 1" and "A 2."

273 I offer in evidence the report of the committee on streets, found in the Journal of the Common Council for 1863, at p.

140, and signed by Paul Gies as chairman of the committee. A copy is introduced in evidence and marked Exhibit "A 3."

I offer in evidence an ordinance approved August 19, 1863, found in the Journal of the Common Council for that year at p. 150; a copy is hereto annexed marked Exhibit "A 4."

I offer in evidence the proceedings of the common council under the head of petitions presented, of September 26, 1863, on p. 169 of the Journal.

A copy is attached hereto marked Exhibit "A 5."

I offer in evidence an ordinance of the common council of the city of Detroit, approved January 4, 1864, found on page 287 of the Journal of the Common Council.

A copy of the same is hereto annexed marked Exhibit "A 6."

I offer in evidence an extract from the Journal of the Common Council of the City of Detroit, dated September 20, 1864, found on p. 163 of the Journal of the Common Council for that year, marked Exhibit "A 7."

A copy of the same is hereto attached.

I offer in evidence the veto of the mayor of the city of Detroit, found in the Journal of the Common Council under date of September 27th, 1864.

The same is hereto attached and marked Exhibit "A 8."

I offer in evidence an ordinance of the common council of the city of Detroit, approved October 8th, 1864, found on page 171 of the Journal.

A copy of the same is hereto attached and marked Exhibit "A 9."

I offer in evidence a resolution of the common council of the city of Detroit, adopted April 4th, 1865, found on p. 4 of the Journal for that year.

274 A copy of the same is hereto annexed, marked Exhibit "A 10."

I offer in evidence the report of the city counselor and the city attorney in pursuance of the foregoing resolution, found in the common council proceedings of April 11th, 1865, p. 6.

A copy of the same is hereto annexed, marked Exhibit "A 11."

I offer in evidence a report from the city counselor at a meeting of the common council of the city of Detroit, held on the 23d day of May, 1865, found on p. 43 of the Journal of the Common Council.

A copy of the same is hereto attached and marked Exhibit "A 12."

I offer in evidence a resolution of the common council found on p. 46 of the Journal under the same date.

A copy of the same is hereto annexed and marked Exhibit "A 13."

I offer in evidence a report made at the meeting of the common council, held June 8th, 1865, and found on p. 60 of the Journal of the Common Council.

A copy of the same is hereto attached and marked Exhibit "A 14."

I offer in evidence a resolution of the common council of the

city of Detroit passed at the session of March 12th, 1867, and found on p. 313 of the Journal for that year.

A copy of the same is hereto annexed, marked Exhibit "A 15."

I offer in evidence the report of the committee referred to in the above resolution, made at the meeting of March 19th, 1867, and found on p. 317 of the Journal of the Common Council.

A copy of the same is hereto attached and marked Exhibit "A 16."

275 I offer in evidence an extract from the Journal of the Common Council of April 21st, 1868, found on p. 17 of the Journal of the Common Council.

A copy of the same is hereto attached and marked Exhibit "A 17."

I offer in evidence another extract from the Journal of the Common Council Proceedings at the meeting of June 9th, 1868, pp. 119, 120.

A copy of the same is hereto attached and marked Exhibit "A 18."

An adjournment was here taken to 10.30 a. m., November 21st, 1895.

At 10.30 a. m. the same parties met pursuant to the adjournment heretofore had and the examination was proceeded with as follows:

Mr. BAKER: I offer in evidence an ordinance of the common council of the city of Detroit, approved July 8th, 1873, and found in the Journal of the Common Council for that year at p. 359.

A copy of the same is hereto attached and marked Exhibit "A 19."

I offer in evidence an ordinance of the common council of the city of Detroit, passed over the mayor's veto January 11th, 1875, and found in the Journal of the Common Council for that year on p. 5.

A copy of the same is hereto attached and marked Exhibit "A 20."

I also offer in evidence an ordinance of the common council of the city of Detroit, approved October 1st, 1875, found in the Journal of that year at p. 545.

A copy of the same is hereto annexed and marked Exhibit "A 21."

I offer in evidence an ordinance of the common council of the city of Detroit, approved August 18th, 1876, and found in the Journal of the common council for that year at p. —.

276 A copy of the same is hereto annexed and marked Exhibit "A 22."

I offer in evidence an ordinance of the common council of the city of Detroit, approved August 20th, 1877, found in the Journal of 1877 at p. 520.

A copy of the same is hereto attached and marked Exhibit "A 23."

I offer in evidence an ordinance of the common council of the city of Detroit, approved November 14th, 1879, and found in the Journal of the Common Council for 1879 at pp. 632 and 666.

A copy of the same is hereto annexed and marked Exhibit "A 24" and "A 24½."

I offer in evidence an ordinance of the common council of the city of Detroit, approved December 11th, 1880, granting a right of way of Farrar street and found on p. 659 of the common council proceedings of that year.

A copy of the same is hereto attached and marked Exhibit "A 25."

I offer in evidence an ordinance approved July 8th, 1882, providing for a double track on Griswold street, found in the Journal of the Common Council of 1882, at p. 372.

A copy of the same is hereto annexed and marked Exhibit "A 26."

I offer in evidence an ordinance of the common council of the city of Detroit, approved March 29th, 1884, extending the double track on Jefferson avenue along Woodbridge street from Second to Third street and found in the Journal of the Common Council of 1884 at p. 126.

A copy of the same is hereto annexed and marked Exhibit "A 27."

I offer in evidence an ordinance of the city of Detroit, approved July 21st, 1884, authorizing an additional track on the Campus Martius and the same is found in the Journal of the Common Council of 1884, at p. 484.

277 A copy of the same is hereto annexed and marked Exhibit "A 28."

I offer in evidence an ordinance of the common council of the city of Detroit, approved January 5th, 1885, granting a right of way to the Brush and Russell Street line, found in the Journal of the Common Council for 1884, at p. 751.

A copy of the same is hereto annexed and marked Exhibit "A 29."

I offer in evidence an ordinance of the common council of the city of Detroit, approved July 31st, 1885, granting the right of way for Trumbull Avenue line, found in the Journal of the Common Council of 1885 at p. 382.

A copy of the same is hereto annexed and marked Exhibit "A 30."

I offer in evidence an ordinance of the common council of the city of Detroit, approved October 9th, 1885, extending the Russell Street line north to the Lake Shore Railroad crossing, found in the Journal of the Common Council of 1885 at p. 382.

A copy of the same is hereto annexed and marked Exhibit "A 31."

I offer in evidence an ordinance of the common council of the city of Detroit, approved September 1st, 1886, extending the double track on Michigan avenue to Twenty-fifth street, found in the Journal of the Common Council of 1886 at p. 455.

A copy of the same is hereto annexed and marked Exhibit "A 32."

I offer in evidence an ordinance of the common council of the city of Detroit, approved July 26th, 1887, extending the Cass Avenue and Third Street line to Holden road and along Holden road to the railroad crossing, found in the Journal of 1887, at p. 516.

278 A copy of the same is hereto annexed, marked Exhibit "A 33."

I offer in evidence an ordinance of the common council of the city of Detroit, approved October 27, 1888, extending the Trumbull Avenue line to the railroad crossing, found in the Journal of 1888, at p. 782.

A copy of the same is hereto annexed and marked Exhibit "A 34."

I offer in evidence an ordinance of the common council of the city of Detroit, approved January 3rd, 1889, granting the following extensions and new routes: (1) East Fort Street line; (2) Second and Cass avenue from Ledyard to the railroad crossing; (3) double track on the easterly part of Jefferson avenue; (4) double track on Gratiot avenue; (5) Mack Street line; (6) connecting Michigan Avenue and Monroe Avenue lines; (7) Chene Street line. This ordinance is found in the Journal of the Common Council of 1889, at p. 31.

A copy of the same is hereto annexed and marked Exhibit "A 35."

I offer in evidence an ordinance of the common council of the city of Detroit, approved April 5, 1889, extending the double track on Michigan avenue to the city limits, found in the Journal of the Common Council of 1889, at pp. 148 and 172.

A copy of the same is hereto annexed and marked Exhibit "A 36" and Exhibit "A 37."

I offer in evidence an ordinance of the common council of the city of Detroit, approved November 19, 1889, by which the Russell Street line was extended to the city limits, found in the Journal of the Common Council of 1889, at p. 832.

A copy of the same is hereto annexed and marked Exhibit "A 38."

279 I offer in evidence the proceedings of the common council of the city of Detroit resulting in the passage by the common council on the 12th day of July, 1892, of an ordinance entitled "An ordinance providing for the introduction of rapid transit on the lines of street railway owned and operated by the Detroit Street Railway Company; and to provide for certain extensions and changes of existing lines, and the terms upon which the same may be operated by said company." Found in the proceedings of the Common Council of 1891, at pp. 504–520–541–542.

A copy of the same is hereto annexed and marked Exhibit "A 39."

I offer in evidence the veto message of the Hon. Hazen S. Pingree, mayor of the city of Detroit, vetoing the above-mentioned

ordinance, and his message will be found in the Journal of the Common Council of 1891, at page 553, and the vetoed ordinance, which does not appear in the Journal proceeding, will be produced by the city clerk.

A copy of the same is hereto annexed and marked Exhibit "A 40."

I offer in evidence a conveyance or bill of sale from the Detroit city railway to the Detroit Street Railway Co., dated December 1st, 1890.

A copy of the same is hereto annexed and marked "A 1."

I offer in evidence a conveyance dated 17th day of September, 1891, from the Detroit Street Railway Co. to the Detroit Citizens' Street Railway Company, of a number of parcels of land and also of all the street railway lines owned by the party of the first part in the city of Detroit. Recorded in the office of the register of deeds for Wayne county on the 2nd of October, 1891, in Liber 364 of Deeds, p. 264.

A copy of the same is hereto annexed and marked Exhibit "B 2."

280 I also offer in evidence a conveyance dated September 16, 1891, from the Detroit city railway direct to the Detroit Citizens' Street Railway Co., and recorded in the register's office March 2nd, 1892, in Liber 390 of Deeds, at p. 343.

A copy of the same is hereto annexed and marked Exhibit "B 3."

I offer in evidence a conveyance from the Grand River Street railway to the Grand River Railway Company, dated the 1st day of December, 1890.

A copy of the same is hereto annexed and marked Exhibit "B 4."

I also offer in evidence a conveyance from the Grand River Railway Company to the Detroit Citizens' Street Railway Company, dated 16th of September, 1891, and recorded in the Wayne county register's office in Liber 565 of Deeds, at p. 541.

A copy of the same is hereto annexed and marked Exhibit "B 5."

I offer in evidence a paper labeled "bill of sale" dated 16th of September, 1891, from the Grand River Railroad Company to the Detroit Citizens' Railway Company.

A copy of the same is hereto annexed and marked Exhibit "B 6."

JERE. C. HUTCHINS, recalled on behalf of the complainant for further examination-in-chief.

Mr. BAKER:

Q. Are the papers which I have introduced in evidence the title papers now in the possession of the Detroit Citizens' Street Railway Company?

A. They are.

Q. And they are produced from the office of the company?

A. Yes, sir.

281 Cross-examination.

Examined by Mr. HATCH:

Q. Has the complainant company recently revoked the privilege of transfer tickets that has been in existence since last summer?

A. The Citizens' Street Railway Company voluntarily put in effect a new and increased transfer system in June last. Since that time the Citizens' Company has established several through cross-town lines, extending from the upper limits of the city on the one side to the outer limits of the city on the other side. These cross-town lines being operated at one rate of fare, there is no necessity for transfers. It has this morning withdrawn a number of voluntary transfers that have been in effect since June last.

Q. Can you state at how many points heretofore, and until this morning, such transfers were issued for, how many places of change?

A. There are quite a large number. I would have to refer to the list of transfers to be able to answer that question.

Q. You haven't got the data now in mind?

A. I haven't the data fully in mind.

Q. Have you it in the office?

A. Yes, sir.

Q. You could not answer the question except by referring to memoranda in the office?

A. No, sir.

Q. You could do it by so referring?

A. Yes, sir.

Q. Can you state how many were revoked by the order that went into effect this morning?

A. From memory I cannot.

282 Q. Can you state now what transfers are now given?

A. All that are required by the ordinances, and that is quite an extended list.

Q. Do you now issue any transfers not required by some ordinance?

A. We carry passengers on through lines without giving transfers.

Q. You don't answer my question. Do you issue any transfers now not required by some ordinance?

A. I don't know that we do.

Q. So that by reading the ordinances we can determine what transfers you now issue?

A. I think you can.

Q. I wish you would inform yourself and be ready to tell us how many transfers you did issue prior to this morning; at how many different places, and how many are revoked by the orders which went into effect this morning. Is this change in the policy of the company a step in returning to all the rights secured to you by the ordinances? What do you say to that, Mr. Hutchins? Let us get on.

A. I suppose we have reserved rights or various rights under the ordinances which we will not desire to fully exact.

Q. Has the complainant company determined to exact the rates

of fare which are allowed to them under the ordinances now in existence?

A. The company is very anxious to establish friendly and amicable relations with the city government.

Q. I don't believe you gain anything by going around my questions so. Just answer it and you can make your speech afterwards.

A. What is the question, will you read it?

Last question read.

Q. From this time on?

283 A. No order exacting the rate of fare has as yet been put in effect, it probably will be done.

Q. In the near future?

A. In the near future.

Examined by Mr. FLOWERS:

Q. Do you know, either from your own knowledge or from information derived by you as an officer of this company, or in connection with it, how long the Citizens' Company, or its predecessors have carried passengers in Detroit at the rate of six tickets for a quarter?

A. I don't.

Q. Have you any idea, from any information you have, of how long that has been done?

A. I really don't know.

Q. The system was in vogue when you came to Detroit?

A. It was when I came to Detroit a year ago, but I don't know how long it had been in vogue prior to that time.

Q. What was your object in introducing a system of transfers last June?

A. The company did it because they desired to make every possible concession that could be made out of its earnings.

Q. It was done, was it not, so as to give the people of Detroit access to Belle Isle park and other public places at one fare?

A. It was done as I stated, out of our desire to give every accommodation we could out of the earnings of the company.

Q. What, then, is your object in withdrawing them? No further desire to accommodate the public?

A. We have incurred some very heavy expenses in litigation resulting from opposition on the part of the city government,

284 and we cannot produce the same results in the economies of operation and management with the abnormal expenses arising from continued opposition.

Q. Let us first take up the question of heavy legal expenses. What heavy legal expenses have you incurred since last June by reason of any suit against you by the city government?

A. Until within the last few days we have had a corps of prominent lawyers engaged in defending the company in the United States Supreme Court, in the case that was pending there and which was recently decided in favor of the company. We had hoped that when that case was decided the litigation would be ended; but it

has been announced that the city proposes to proceed with cases on the rights of eminent domain and in other ways, continuing the litigation, and such a course must necessitate the continuance in the company's interest of the attorneys in our employ, with all the attendant expenses.

Q. The proceeding in the Supreme Court of the United States to which you refer was simply a motion for a writ of certiorari, for leave to appeal?

A. It was a motion which meant that the case which had been decided favorably to the company in the United States court of appeals should be reopened on its merits in the United States Supreme Court.

Q. That was the only suit pending, was it not?

A. That writ was denied and we had hoped that would end the matter——

Q. (Interrupted.) The question I ask you—was there any other suit pending against you except that, by the city?

A. Not directly, no, sir.

Q. Was there any indirectly?

A. We have become involved in more or less litigation with the rival railway company.

Q. Did they commence suit against you?

285 A. To establish——

Q. (Interrupted.) Oh, answer the question. Did they commence a suit against you?

A. I will finish my answer.

The last answer was then read to the witness as far as completed at his request.

WITNESS: Certain rights under existing contracts with the city.

Q. You refer to the present suit, don't you, among others?

A. I refer to the present suit among others.

Q. That is a suit against the city and the Detroit railway?

A. I believe that is the nature of the case.

Q. Aside from the case which you refer to, which was simply a motion for an appeal, the city of Detroit has not instituted any proceedings against you or carried on any litigation since June, 1895, has it?

A. It has carried on litigation up to within——

Q. (Interrupting.) Against you, I say.

A. I say it has carried on litigation against the company up to within the last few days in the United States Supreme Court, and the announcement is made that it is proposed to take the case up along another line, all of which necessitates the retention of our expensive legal corps.

Q. Please answer the question. You can explain it afterwards. The question I asked you was this, aside from the application to the Supreme Court of the United States for leave to appeal, the city of Detroit has not commenced any proceedings against your company, has it?

A. Not within my own knowledge.

Q. What reason have you to apprehend that any other proceedings will be commenced?

A. We have had a public announcement of the city authorities that that was the intention.

286 Q. What city authorities?

A. The mayor.

Q. All you know about that is what you have seen in the papers, is it not, in the newspapers?

A. That is the principal source of my personal information in regard to it.

Q. What attorneys have you retained to defend your company against an attack on the ground of eminent domain, based on the statement you have seen in the newspapers?

A. We have not discharged the attorneys who have been conducting those cases more or less for a number of years past.

Q. The attorneys which you have are attorneys employed in suits and only in suits instituted by you, are they not, at the present time?

A. We have not adjusted our accounts as yet with the attorneys who have been engaged in connection with all our troubles. Of course we expect them to continue on until we can arrive at some amicable adjustment of the whole matter, and that is very earnestly desired by everybody connected with the company.

Q. But you don't expect they will render you bills because you have seen in the newspapers that somebody is talking about eminent domain, do you?

A. I am in hopes such opposition will not be continued, and I also hope there will never be any new bills rendered.

Q. You know that there is no authority in law anywhere to proceed against you on the ground of eminent domain?

Objected to.

Question withdrawn.

287 Q. I asked you a question about why you had gone back upon the transfers and you stated principally on account of the legal expenses which you have been put to, and you have given us all the cause for legal expenses in your knowledge, haven't you?

A. It has been realized in four years of fighting that opposition to street railway means the expenditure of a great deal of money. We have known enough about it to know that the opposition still continues and the abnormal expenses must be met; that there must be large sums of money paid out.

Q. Then you want us to understand, do you, that the reason that you have abrogated the transfer system which you adopted for the accommodation of the people, is because of the heavy legal expenses to which you have been subjected?

A. Yes, sir, and because we are extremely desirous that something may come out of the discussion of the matter that will result in the establishment of peaceful and friendly relations with everybody concerned.

Q. What peaceful and friendly relations do you wish to establish that do not now exist?

A. We don't want any litigation.

Q. Do you want the city to discontinue the suit which you commenced against it?

A. We want to avoid the expense, inconvenience and annoyance of opposition of all kinds.

Q. To what opposition do you refer now?

A. Any kind of opposition that might be the outgrowth of unfriendly relations between the city and the corporation.

Q. What opposition do you anticipate in view of the fact that you have a franchise running for fourteen years?

A. It would be a difficult thing for one to say what various
288 forms opposition will take, and what particular phases of it we want to avoid—we want to avoid all of it, any kind of opposition.

Q. Do you expect to allay opposition by raising the prices which the public has to pay for riding upon street cars?

A. We hope that the city will meet us half way and settle the matter.

Q. Meet you half way in what respect?

A. In every respect.

Q. What do you suppose will be the savings of the company by your taking off the transfers at the present time which you have now ordered off?

A. I could not estimate the saving. It may not be anything.

Q. It was stated in the newspapers today—and that seems to be one source of your information—that it would be a thousand dollars a day difference to you; what do you think of that statement?

A. I have no idea it will be any such thing.

Mr. BAKER: Let me call the witness' attention to this:

Mr. Johnson stated to me that they didn't know; that one of the objects in taking off the transfers was to find out. He told me he had never had a system of transfers where it had been abandoned and he could not tell how it would affect the income of the company. No one knows.

WITNESS: That is true.

Q. Do you want to adopt Mr. Johnson's statement, now, that the reason that you have taken off the transfers is to find out whether it is to your interest or not?

Mr. BAKER: I object because it assumes there is only one reason for it.

A. Well, that is one reason. It was stated incidentally, I presume, that this would give the company an opportunity to see what
289 the results would be from a change of that kind. The whole question of transfers is a big question and it is a matter of doubt with all managements to what extent transfers can be given profitably for the company.

Q. Is it not a fact that you established your transfer system be-

cause the Detroit railway had obtained an ordinance which gave the people universal transfers on all its lines, thus enabling it to compete with your line in carrying passengers to Belle Isle and other public places?

A. I never heard the Detroit railway discussed in that connection.

Q. Is it not a fact that you now desire to get an extension of your franchise to 30 years instead of 14?

A. We have never asked for such an extension.

Q. Is it not a fact that you desire to get one?

A. Of course, an extension of the company's franchise is desirable.

Q. Is it not a fact that your company proposes to make application to the common council for such an extension?

A. I cannot say that such is the intention of the company.

Q Is it not a matter of fact that the matter has been talked over and agreed upon between you?

A. It is not a fact that it has been agreed upon.

Q. Is it not a fact you have taken off transfers and have threatened to raise the fare to five cents for the purpose of holding that threat over the people of Detroit as a club to induce their representatives in the common council to grant you an extension of franchise?

A. It is not. Our sole desire is simply to get the matter into discussion and out of discussion bring about amicable relations between the city and the company.

Q. That is, having adopted a system by which you can operate by electric cars and carry a great number of passengers at less
290 cost, you now propose to raise the fare and take off the transfers in order to get an amicable settlement of your difficulties, or imaginary difficulties, with the city, is that true?

Objected to as a mere matter of argument.

A. Read the question.

The question was read twice.

A. Under normal circumstances expenses of operation are less than when the company—I don't understand the question, read it.

Mr. FLOWERS: I will divide up the question.

Mr. BAKER: I object to the question because it undertakes to argue the case and calls for an admission that it would not be proper to make under all the facts.

WITNESS: Just strike out what I have said. I say with the opposition to meet, the expenses of operation must be abnormal and must be provided for.

Q. Then are we to understand that you have taken off the transfers and propose to return to a five-cent fare in order to meet the expenses occasioned by what you call opposition?

A. Partly that and partly as I have stated.

Q. Partly that and partly to use it as a club?

A. Partly that and partly as I have stated, that we hope a discussion of the matter will result in an adjustment of the whole subject.

Q. Upon the theory that the way to discuss a matter with a man is to knock him down?

A. On the theory that we simply get our contract rights in this matter, and can come down from them in effecting a compromise.

Q. You mean that you return to your contract rights?

A. Get on our contract rights in this matter.

Q. What do you mean by "getting on" to your contract rights?

A. There is a contract between the city and the railway
291 company, under which a five-cent rate of fare is authorized.

Q. Then you simply mean to say that you have returned simply to your original ordinance for the purpose of getting from the citizens of Detroit what your contract permits you to get?

A. Yes, sir.

(Signed) JERE. C. HUTCHINS.

Subscribed and sworn to before me this 3d day of December, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

The examination was then adjourned to 2 o'clock p. m.

At 2 o'clock p. m., on November 21st, 1895, the parties met together pursuant to adjournment taken and the examination was proceeded with as follows:

JACOB GUTHARD, a witness produced on behalf of the defendant, being first duly sworn, to testify the truth, the whole truth and nothing but the truth, testified as follows:

Examined by Mr. HATCH:

Q. You reside in the city of Detroit?

A. I do.

Q. You are a member of the board of public works?

A. Yes.

Q. How long have you been a member of the board of public works?

A. Five years and over.

Q. Are you familiar with the price for doing different sorts of pavement in the city of Detroit?

A. Yes, sir.

Q. What is the current price or what has been the current price for putting in concrete in the city on the street as a foundation for street-work?

292 A. We find six inches can be laid for about fifty cents a yard.

Q. What is the price for building cedar-block pavement per yard?

A. From forty-seven to fifty-two cents.

Q. That is in addition to the concrete foundation?
A. Yes, sir.
Q. From forty-seven to fifty-two cents per square yard?
A. Yes, sir.
Q. What is the average price for putting in asphaltum pavement?
A. This year it has been a dollar and seventy cents for asphalt surfacing.
Q. On top of the concrete?
A. Yes, sir; two dollars and twenty cents including the concrete foundation.
Q. What has been the price for brick pavement?
A. From a dollar sixty to a dollar sixty-three.
Q. That is in addition to the concrete?
A. That is with the concrete, always considering the concrete about fifty cents.

Cross-examination.

Examined by Mr. BAKER:

Q. Does the fifty cents a yard for the concrete foundation include the excavation?
A. No, sir.
Q. That is just for putting in the concrete?
A. That is for putting in the concrete.
Q. That is, six inches of broken stone laid in cement?
A. Yes, sir.
Q. What kind of cement is used?
A. The Louisville, Milwaukee, different kinds.
293 Q. Those are the cheaper kinds of cement?
A. Those are the American cements, the best American cements, tested.
Q. What is known as the Portland cement, is higher?
A. Yes, sir; it is an imported cement—that is, there is some Portland in America, but that is not generally used—Sandusky Portland, for instance.
Q. Do you know what the broken stone costs?
A. One dollar and seventeen to one dollar and twenty-five delivered on the street. The city has a contract for that.
Mr. HATCH: That is for a cubic yard?
A. A cubic yard.

Mr. BAKER:

Q. If it is only laid six inches?
A. You are asking me the price for a cubic yard of stone. The city of Detroit has a contract at $1.17 and $1.24 or $1.25, I could not say, I have not looked it up, for delivering those stones on the street.
Q. The cedar block pavement costs in round numbers about fifty cents a yard?
A. Those are the bids we have had during the season.

Q. That is simply to put the cedar block down and a little gravel?

A. No, enough gravel, not a little; enough to fill up the interstices and tar them.

Q. You get that all done from forty-seven to fifty-two cents?

A. The bids have been that.

Q. How deep are the blocks?

A. Five inches.

Q. Have you got any pavement of that kind in the city now?

A. Yes.

294 Q. Whereabouts?

A. On Hastings, Beaubien, Forest avenue and different streets that have been paved this year.

Q. Isn't it true or isn't it your judgment that that is the best pavement in the world at the present time; cedar block on concrete foundation?

A. The best of its kind.

Q. What would make a better foundation?

A. With cedar blocks?

Q. Yes.

A. Nothing.

Mr. HATCH: You asked what was a better pavement than cedar block, didn't you?

Mr. BAKER: Yes.

A. Granite.

Q. It might be a little more durable, but it would cost a good deal more?

A. Yes. Cedar block is a very fine pavement on concrete.

Redirect examination:

Q. It is only within a year or two that any cedar block has been given the benefit of a concrete foundation, is it?

A. No. Formerly plank and sand were used. The city has to experiment to find out which is the best pavement at times. We think we have found the best, cedar blocks, with concrete under them.

Q. That will enable the city to replace them when worn out at about fifty cents a yard?

A. About fifty cents a yard.

Q. There is no practical difficulty where you have a concrete foundation to make repairs and keep the pavement in good condition for a long time before it is necessary to renew it at all?

295 A. It is a benefit to the general tax-payer to have concrete on the streets so when the surface has worn out it can be replaced without any grading or hauling of earth. Your foundation is there permanently. It outlasts all the surfacing.

Q. So the asphaltum costs pretty near three and one-half times as much; that is, where one costs fifty cents the other costs a dollar and seventy for the same thing?

A. Yes.

Mr. HATCH: That is for the surfacing?

A. Yes.

Mr. BAKER:

Q. Can you tell us how much this concreting—how much it has cost to do this work for the Detroit railway in 1895?

A. I could not without looking it up.

Q. What do you pay it out of, the general road fund?

A. No, sir.

Q. What do you pay it out of?

A. Yes, yes, out of the appropriation allowed by the common council and the board of estimates.

Q. How much was allowed in 1895?

A. I would have to look it up, I don't carry it in my mind.

Q. Don't you know it has cost the city of Detroit between two and three hundred thousand dollars, that work, this year?

A. I don't think so, because the appropriation was not that much.

Q. How much was the appropriation?

A. I will have to look that up.

Q. Is the appropriation exhausted?

A. No.

Q. How much is left?

296 A. That I could not tell you. I would not make any statement about it, without looking it up, because every pay-day it changes.

Q. How long will cedar-block pavement, the surface of it, last before it has to be replaced?

A. We find it lasts, in some places, by being repaired, parts of it, will last ten or twelve years, and then again eight years. Some of it on plank, which is a failure—won't last over three or four years or five years.

Q. I am talking about where cedar blocks are put on a concrete foundation?

A. We haven't had any of it long enough to know. But we find they have been down three years and it is better than some of the pavement we have down.

Q. How long does asphaltum pavement surface last?

A. We have had to repair the asphaltum streets in Detroit inside of the guaranty, or they have been repaired.

Q. That is a mere matter of repairs?

A. Yes, sir.

Q. How long would it be before it would have to be replaced?

A. I don't think Jefferson avenue will last more than three years longer.

Q. How long has it been down?

A. A part of it not quite five years.

Q. On some of your streets it has lasted much longer?

A. Yes, sir; on Cass avenue.

Q. How long has that been down?

A. Six years.

Q. And it is in fair condition yet?

A. Yes, sir.
Q. And it will not need repairs for some time yet?
A. They always need repairs, because an oil wagon going over the street and dropping any oil on the asphalt will disintegrate it.
297 Q. How long before it will need resurfacing?
A. We cannot tell. You can put a patch on and patch it. It will be necessary to do that on some streets, and then the council will have to order the streets repaved, some time. I don't think it will last more than five years.
Q. Is the asphalting done by the job or by days' work?
A. The board is considering sending an estimate to the common council this winter for an asphalt plant for the purpose of repairing our asphalt.
Q. How has it been done heretofore?
A. The contractors when they are here doing some work has repaired the streets he has put down. It is only a year now that the guaranty has run out, so after this we will have to get some of these contractors to come here and repair the streets.
Q. Up to this time you have not had occasion to do that?
A. No.
Q. So you haven't had experience with it yet?
A. No.
Q. How long before brick pavement comes to repairs?
A. Some brick will need repair in the first two years.
Q. How long before it will need relaying with brick?
A. Russell street needs relaying in the spring.
Q. I want to get at something like a general rule; how long on an average will brick last?
A. It is according to the traffic on the street. On one street it will last twenty-five years, on another not over three. Take the case of Russell street. On Riopelle there was a sewer being dug, and on the next street something else was being done, the street was torn up and all the traffic went up Russell, and it just wore that pavement down so it will have to be repaired next spring, and it has only been down two years now.
298 Q. Do you pave with brick in those streets that are away from the center of business?
A. Yes, sir. John R. street, for instance, was paved five years ago.
Q. In what condition is it now?
A. In good condition.
Q. How long before it will come to relaying?
A. Oh, it will last five years or ten years for that matter. The traffic there is not so great, it is lighter traffic.
Q. It depends a good deal on circumstances relating to each street?
A. Yes, sir. All pavements wear out.
Q. Did I understand you to say cedar pavement was better than asphaltum?
A. It is cheaper and I think better.

Q. Is it better than brick?

A. Yes, sir—on the question of health, I don't know; the doctors attend to that.

Q. You don't now pave with cobblestone pavement in the city?

A. No.

Q. Do you know what that costs per yard when it was in vogue?

A. From 70 cents to $1.15.

Q. That was indestructible but got rough?

A. The cobblestone surface don't turn out well. Heavy loads going over cobblestone will leave ruts in the pavement. It is not a practicable pavement.

Q. That was laid on sand and never on concrete foundation?

A. Never on concrete foundation. All pavements which have no concrete foundation won't stand traffic well, it becomes full of ruts.

Q. Has the Detroit railway paid for a large amount of
299 concreting under its tracks on unpaved streets this season?

A. It has.

Q. It has not been refunded to it by the city?

A. Not—no, sir.

Q. Can you state to what amount in dollars?

A. No, I could not, unless I looked over the books. I don't carry these things in my head. There are so many things in the office, that I don't pretend to.

Q. During the season and during the building of the Detroit Railway lines, has it paid for all the repaving on paved streets?

A. Yes, sir, they paid for the paving and inspection and all.

Q. In some cases they put down new blocks where they found old?

—. ——.

Q. And put down new asphaltum?

A. Yes.

Q. Did they put down new brick, in some cases where they took up old?

A. Yes, sir.

Recross-examination.

Mr. BAKER:

Q. How did you do on paved streets, did the board of public works do the work and the inspection, and render bills for the Detroit railway?

A. No, sir.

Q. How then?

A. The company did it themselves.

Q. What did the board of public works have to do with it?

A. We appointed the inspectors at the expense of the company.

Q. How many?

300 A. About forty or fifty.

Q. How many just before election?

A. Less before election than some time before it. We didn't need

it this time. If I was called here to tell you anything about politics, I will tell you that somewhere else, and I can tell you a lot.

Q. I haven't any doubt of that, but I want to get at how that work was done, that is all.

A. The work was done by the railroad company. We had men there with instructions to see that it was properly done—well done.

Q. On the unpaved streets you did do that for awhile?

A. Yes.

Q. And then stopped after an injunction was served on you?

A. We stopped when the court ordered us. We always obey orders.

Q. Has the Detroit railway paid for all that inspection?

A. There may be a claim that is not paid. We send them a bill the first of the month, and they generally pay by the 10th. I don't know how much they owe this month. I know there was one bill there they paid of $10,000.

(Signed) JACOB GUTHARD.

Subscribed and sworn to before me this 9th day of December, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

FORD STARRING, a witness produced on behalf of the defendant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Examined by Mr. HATCH:

301 Q. You are in the employ of the Detroit railway, are you?

A. I am.

Q. How long have you been in the employ of that company?

A. Since the first of May last.

Q. In what capacity are you now engaged?

A. Auditor of the company.

Q. As such have you had charge of their books of account?

A. I have.

Q. What is the total number of passengers carried on your road from September 1st to November 15th?

A. 2,191,924.

Q. What was the average per day?

A. 20,485.

Q. What was the number of transfers issued during the same time?

A. 620,576.

Q. What was the average per day of transfers?

A. 5,800.

Q. What was the amount of cash receipts?

A. $76,657.21.

Q. That was for fares, was it?

A. That was the value of all fares taken up.

Q. What was the average per day?
A. $716.42.
Q. What was the average number of cars run during that time, per day?
A. About 30.
Q. Can you give me the corresponding statistics for the month of August, 1895?

302 A. For August, 1895, the number of passengers carried was 539,511; transfers taken up, 163,773; value of fares collected, $19,271.23. I have not got the averages figured on that.

Q. What was the number of cars per day?
A. We ran about 30 cars during August.
Q. What is the average receipt per passenger from September 1st to November 15th, 1895?
A. It would run three and a half cents.
Q. Give me the minimum and maximum.
A. From 3.40 to 3.56.
Q. That is three cents and forty one-hundredths?
A. To three cents and fifty-six hundredths.
Q. Making an average, you think, of about three and a half cents?
A. About three and a half cents.
Q. Can you give me the number of cash fares?
A. I can't for the whole period now.
Q. Can you give it for any particular date?
A. I can give it for any particular date this month. I could the others, but not offhand; I could obtain them for you.
Q. Give us what you have got before you.
A. Taking last Saturday?
Q. Yes, give us the whole reading for that day.
A. Total cash received, $253.50; receipts from eight-for-a-quarter tickets, $796.59; receipts from six-for-a-quarter tickets, $75.87; from policemen's and firemen's tickets, $1.34; total receipts, $1,127.30.
Q. That is for all?
A. That is for all, tickets and cash. The percentage of cash was 22.4; percentage of tickets, 77.5; number of cars, 53; average earnings per car, $21.27; total mileage, 9,003 miles; total of passengers carried, 32,449; average per passenger, 3.47; employés riding, 243.
Q. Transfers?

303 A. The transfers are not given for that day, but they run about 27 per cent.

Examined by Mr. CORLISS:

Q. You have been connected with the Detroit railway for some considerable time since its operation, haven't you?
A. Yes, I have.
Q. As its financial manager and auditor?
A. Yes, sir, as its auditor.

Q. Can you state whether from the operation of the lines they are so constructed and laid out as to best accommodate the people living in the vicinity where the lines extend in the city, so far as they are extended and constructed?

A. I should say they were.

Q. Will you state whether the lines as constructed by the Detroit railway could be operated as advantageously for the public living along the lines of the Detroit railway as they could be if made extensions of the Citizens' lines?

A. I should say better as they are.

Q. Why?

A. They pass more homes and are not hindered by traveling on main thoroughfares where the speed must necessarily be slower.

Q. Is it not a fact that the main highways occupied by the Citizens' Company are now, with the traffic upon those lines, greatly crowded?

A. They are very much so.

Q. Would not the addition of the travel of the public that now patronizes the Detroit railway to reach the center of the city burden the Citizens' lines if extended into their lines?

Mr. BAKER: That is objected to as leading, and the examination is too suggestive to the witness.

304 A. I should say it would not be to the advantage of the traveling public to have more cars on the main thoroughfares.

Examined by Mr. HATCH:

Q. What is the distance that the lines of the Detroit railway have been laid, single track, on unpaved streets within the city?

A. 3.597 miles.

Q. What is the distance that single track has been laid upon streets paved with cedar blocks?

A. 14.822.

Q. What is the distance where single track has been laid on streets paved with brick?

A. 1.509.

Q. And what distance where paved with asphalt?

A. $\frac{404}{1000}$ of a mile.

Q. What is the distance of total single track on paved streets?

A. 16.736.

Q. What is the distance that double track has been laid on unpaved streets?

A. 5.148.

Q. What is the distance that double track has been laid on streets paved with cedar blocks?

A. 4.994.

Q. What is the distance that has been laid on streets with brick pavements?

A. 1.109.

Q. Where paved with asphalt?
A. $\frac{320}{1000}$ of a mile.
Q. What is the length of double track on paved streets?
A. 6.125.
Q. What is the total length of double track?
A. 11.273 miles.

305 Q. Now, you have reduced that to single-track mileage, haven't you?
A. I have.
Q. And that makes just double that amount. What is the distance?
A. The total amount of single track would be 22.546 miles.
Q. That is double track reduced to single track; that is what your last answer covers?
A. Yes, sir.
Q. Making a total of miles within the city of how much?
A. 42.879.
Q. What is the length of track laid outside of the city limits?
A. 2.639.
Q. What is the length of joint tracks inside the city limits?
A. 1.587.
Q. What do you mean by joint tracks?
A. Tracks used in common with other railroads, the Citizens' railroad and the Fort Wayne & Belle Isle.
Q. Some with one company and some with another?
A. Yes, sir.
Q. You have some additional trackage which you call "special emergency curves," haven't you?
A. We have.
Q. What is the length of that?
A. $\frac{656}{1000}$ of a mile.
Q. Making a total trackage of the company of how much?
A. 47.761 miles.

306 Cross-examination.

Mr. BAKER:

Q. How long have you been in the street railroad business?
A. Since the 1st of May.
Q. You never had any experience before that?
A. None, whatever.
Q. So that you are not a practical street railroad man?
A. Not in that sense of the word; no, sir.
Q. Your business relates to the finances and to the auditing of the accounts and things of that kind?
A. Entirely.
Q. You had nothing to do with the laying out their lines?
A. Nothing whatever.
Q. You know, don't you, that this company sought legislation in Lansing which would enable it to go down Woodward avenue and some of these main thoroughfares?

A. Yes, sir.

Q. And you think it would be advantageous to your company to do so.

A. As they then laid it out, yes.

Q. There wasn't enough over-traffic or excess of traffic on these streets to make that detrimental to the public in case you had succeeded?

A. The object was to land people in the center of the city.

Q. And it was very much desired by your company to go down Woodward, Michigan and Gratiot, wherever you struck those lines, wasn't it?

A. Within the half-mile circuit.

Q. Your company endeavored to get legislation through the legislature at Lansing to do that?

307 A. Within the half-mile circuit.

Q. You have some scheme on now, some proposition to use Woodward avenue from the Grand Circus down?

A. Yes, sir.

Q. And the object of that would be to enable you to bring your passengers right to the center of the city?

A. Yes, sir.

Q. As I recall your answer, your average running expenses—your average receipts, since you have been running, have been $716 a day.

A. During the month specified, yes, sir.

Q. What do they run now?

A. They run closer to $900 a day.

Q. That is, since you have got your system more complete and in more general operation, they run up to about $900?

A. Yes, sir.

Q. How long have you had your power-house in operation?

A. Barely ten days, hardly so. We are still using occasionally a little outside current.

Q. Has the business progressed so far that you can tell us with any accuracy what the daily running expenses are?

A. No, sir.

Q. How many men have you in your employ on your pay-roll?

A. We have averaged 150 conductors and motormen.

Q. What do they get a day?

A. Twenty-one cents an hour, and 19 cents an hour for another class.

Q. What will they average per day?

A. They will average from $2.00 to $2.20 a day.

Q. How many have you?

308 A. We have on today 150 conductors and motormen.

Q. How many men have you employed about the power-house and otherwise?

A. Not to exceed 50 in all.

Q. Are any of those men higher-priced men?

A. The average would be less.

Q. Some of them are higher priced and some lower?

A. Yes.

Q. Have you got all the lines in operation yet, that is, those that are constructed?

A. No, there is one line that is lacking some three or four miles.

Q. Have you got all the cars on that you intend to put on?

A. No, sir.

Q. How many do you lack?

A. We are averaging 55 cars and expect to average 65 this winter.

Q. Have you enough experience to tell us what proportion of the travelers on street railways live on the same street the road runs on?

A. No, sir.

Q. Do you know, as a matter of general observation, or don't you, that a very large portion, or a considerable portion of the passengers on a street-car line, do not live on the immediate street, that they come from adjoining streets?

A. Certainly.

Q. But you have no data to give us on that?

A. No, sir.

Mr. HATCH: Mr. Hutchins was to give us the average earnings for 1894. He said the book was locked up and couldn't get it; I would like to have it for the same month of 1894 as we had it for 1895.

309 Mr. BAKER: I will get that for you. I have not got through with my testimony and we will get that in later.

(Signed) FORD STARRING.

Subscribed and sworn to before me this 5th day of December, A. D. 1895.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

GEORGE E. CURRY, a witness produced on behalf of the defendants, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Examined by Mr. HATCH:

Q. What is the width between the rails of the track where the pavement is laid?

A. A very small fraction of an inch less than four feet and a half.

Q. You have been superintendent of the construction of the Detroit railway during the summer, haven't you?

A. Yes.

Q. Superintending the laying and grading of a great amount of track and the concreting between the ties and tracks of the lines?

A. I superintended the laying of all the concreting and most of the track.

Q. You have been a jobber in paving in this city for several years, haven't you?

A. Yes, sir, for seven years.

Q. What is the width of the strip between the tracks where double tracks are laid on a street?

A. It varies, it is not always the same.
Q. In general, what is it?
A. About five feet one inch to five feet three inches.
310 Q. On a street where there is a double track, what will be the distance between the two outer rails of the tracks?
A. About 14 feet.

Examined by Mr. CORLISS:

Q. In the construction of the Detroit Railway track on paved streets where the pavements have been taken up for the purpose of pulling the track out, at whose expense has the construction, the concreting and the repavement been done?
A. At the company's expense.
Q. In some streets having double tracks, have the highways, or rather the roadways, been widened?
A. Yes, sir, in a few cases.
Q. At whose expense has that been done?
A. At the company's expense.
Q. That is true of Fourteenth avenue, isn't it?
A. Yes, sir.
Q. And Clifford street?
A. Yes, sir, and Miami avenue and Mt. Elliott, and Warren.
Q. What was the expense of the widening of Fourteenth avenue?
A. Between $14,000 and $15,000.
Q. How much was the roadway widened?
A. It was widened five feet on each side, ten feet altogether.
Q. In any case, has the repaving of the entire street been made at the expense of the company?
A. No.
Q. Where it has been necessary to relay it?
A. Only in very small places, intersections, and such things.
Q. But all of the expense necessary to take up and restore the pavement, as well as the widening of the roadway, where it
311 has been deemed necessary by the common council, has been made at the expense of the Detroit railway on paved streets?
A. Yes, sir.
Q. Do you know the total amount of cost to the Detroit railway of the widening of the roadways where double tracks have been laid?
A. I don't know exactly, it is nearly $50,000.
Q. What has been the aggregate expense for taking up and relaying pavements on streets where tracks have been laid?
A. Including the concreting?
Q. Yes.
A. About $10,000 per mile.
Q. And how many miles?
A. About 35, I think.
Q. Miami avenue was widened how much?
A. Five feet on each side.
Q. Making a ten-foot widening?
A. Yes, sir.

Q. And that has been laid upon concrete?
A. Yes, sir.
Q. And that is also true of Fourteenth avenue, isn't it?
A. Yes, sir.
Q. And Clifford street?
A. Clifford street was widened three or four feet, I think it was four feet.
Q. On concrete?
A. Yes, sir, all widening has been done upon a concrete foundation.
Q. The entire expense being paid by the Detroit railway?
A. Yes, sir.

312 Cross-examination.

Mr. BAKER:

Q. Did the Detroit railway put down the same rail as the Citizens' railway?
A. No, sir.
Q. How much does your rail weigh to the foot?
A. It weighs 85 pounds to the yard.
Q. It is a grooved rail?
A. Yes.
Q. How wide is your rail on the bottom, the flange on the bottom?
A. Five inches.
Q. How wide is the rail on top where the wheels run, from outside to outside?
A. Two and a quarter inches, I think, I am not positive about that, though.
Q. What kind of ties do you have?
A. White-oak ties.
Q. How far do they project out?
A. About a foot on each end.
Q. On each side beyond the track?
A. Yes.
Q. You put oak ties on your concrete foundation?
A. Yes, sir.
Q. You have nothing but oak ties?
A. Nothing but oak ties.
Mr. FLOWERS: You have some steel ties, haven't you?
A. Oh, yes, that was an oversight. We did do some trenchwork.
Mr. BAKER: What were those, longitudinal ties?
A. That is without any ties.
Q. How much of that have you got?
A. About three-quarters of a mile.
313 Q. Whereabouts is it?
A. On Clifford street and Bagg street.
Q. That was where you laid the rail right on the concrete?
A. Laid the rail right on concrete, embedded in Portland cement.

Q. How wide is the Portland cement right under the rail?
A. Right under the rail, and it is eight inches below the bottom of the rail.
Q. How wide is that Portland cement put in?
A. About a foot to 15 inches.
Q. And eight inches deep?
A. Yes.
Q. Is what you call trench-work laid with Portland cement?
A. Yes.
Q. All of the rest of the work on the street would be cheaper cement?
A. That is all the work it is. It is Portland cement right up to the cushion.
Q. The rest of the street has no concrete on it?
A. It was concreted. It was not disturbed.
Q. Didn't you dig a trench out?
A. We dug a trench out, yes.
Q. But the main concrete remained there?
A. Yes.
Q. You dug a trench out of the old concrete and put in this Portland cement in the place of it?
A. Yes.
Q. You call that trench-work?
A. Trench-work.
Q. Then there is about three-quarters of a mile of it?
A. Yes, sir.

314 Redirect examination.

Mr. HATCH:

Q. How is that laid, and how are the rails held together?
A. They are held together with tie-rods.
Q. What distance apart are the tie-rods?
A. About four feet.
Q. It seems to stand as well as the rest of it?
A. Yes, sir. There was a little bit of asphalt pavement and the concrete comes within two inches and a half of the head of the rail.

Mr. FLOWERS:

Q. Do you know anything relatively of the comparative merits of the smoothness of the tracks, and of running as between the oak and the steel ties?
A. I don't know that that is exactly what causes the difference between the relative smoothness of the tracks or not, but I do know that our road-bed is a good deal easier than what the Citizens road-bed is, and they used steel ties.
Q. It is a better road-bed for running over?
A. Yes, sir.
Q. A good deal better, isn't it?
A. I think so.

Objected to as leading.

Recross-examination.

Mr. BAKER:

Q. What part of the Citizens' road do you compare with the Detroit?

A. Jefferson avenue more particularly.

Q. Since the new track was laid on Jefferson avenue?

A. Yes, sir.

315 Q. What road do you compare it with of yours?

A. Any of ours.

Q. Do you think the cars run smoother on it?

A. Yes, sir; I know they do.

Q. What do you think that is due to?

A. I think it is due to——

Q. (Interrupting.) To the cars, or to the track?

A. Both.

Q. That is, their cars would run quite as smooth as yours?

A. Their cars, I don't think run quite as smooth as ours, and the track is not as smooth as ours.

Q. Isn't this the fact that accounts for the smoothness, that their cars are loaded and yours are not?

A. I have compared the loads between the Baker Street line and the Detroit Railway line and they average up pretty well.

Q. A car unevenly loaded is more unsteady than one evenly loaded?

A. It might possibly be that the cars on Jefferson avenue are old ones and have square wheels.

Q. That is what you call a "flat wheel"?

A. Yes.

Q. That is, a piece of the circumference of the wheel is worn out?

A. Yes, it is very rough; I ride over it four times a day.

Redirect examination.

Mr. FLOWERS:

Q. Isn't it a fact that the Citizens' Company cars jump at every joint?

A. You can feel every joint on Jefferson avenue.

Q. Your track was laid with broken joints, wasn't it?

A. Yes, sir, what we call "staggered joints."

316 The examination was here adjourned until November 22, at 11 o'clock a. m.

(S'g'd) GEORGE E. CURRIE.

Subscribed and sworn to before me this 5th day of December, A. D. 1895.

(S'g'd) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

On November 22nd, at 11 o'clock a. m., the same parties met pursuant to adjournment, and the examination was proceeded with as follows:

CHARLES R. FOSTER was recalled on behalf of the complainant, having been heretofore sworn.

Examined by Mr. BAKER:

Q. Have you made an examination of the files in your custody as city clerk, for the purpose of finding the written acceptances of the old Detroit city railway between 1879 and 1889?
A. Yes, sir.
Q. Have you found them?
A. Yes, sir.
Q. Have you got them in your hands?
A. Yes, sir.

The witness here produces a package of papers.

Q. These are the original papers, are they not?
A. Yes, sir.
Q. Have you made an examination of the files in your office for the purpose of finding the ordinance of the common council that was passed I think on the 1st of July, 1891, which was vetoed by Mayor Pingree, and for that reason never went into effect?
A. I have.
Q. Have you been able to find it?
A. I have not.
317 Q. To what extent have you searched for it?
A. I have searched all through the vaults, and have been upstairs in the record department and am unable to find any papers from 1891; that is, any acceptancss of ordinances or proceedings approved by the mayor.
Q. Where an ordinance is printed in the journal of the common council and is subsequently amended, or on the order of third reading, could you get the contents of the ordinance from the proceedings?
A. Yes, sir.
Q. Have you looked at the records of the common council for 1891, to see whether that is the case in regard to that ordinance?
A. Yes, sir.
Q. It is, is it not?
A. Yes.

Cross-examination.

Examined by Mr. HATCH:

Q. Can you say that the copy of the ordinance vetoed by the mayor, as printed in the journal of the proceedings, is literally correct?
A. I could by looking over the original proceedings. I have not done so. I don't say this is correct, but I could tell by taking the

original proceedings of 1891 and comparing them with the printed proceedings.

Mr. BAKER: But subject to typographical errors, they are the same, are they not?

A. They are supposed to be correct.

Mr. HATCH:

Q. Can you say that the ordinance printed in the proceedings was in the same shape it was when it went to the mayor for his signature, or was it afterwards changed?

318 A. The ordinance submitted by the committee was amended. That appears under the order of third reading in the journal.

Q. So that by taking the journal of the proceedings together, you can determine in what shape it was when it went to the mayor?

A. Yes, sir.

Q. These acceptances, to which reference has been made, all you know about those is, that you found them in the papers of your office?

A. Yes, sir.

Q. When did you begin to be clerk?

A. In January, 1892.

Q. You were in the office before that as a subordinate?

A. Yes, sir.

Q. When did that service begin?

A. In 1887.

Q. Whatever took place prior to 1887, you have no personal knowledge of?

A. No, sir, except from the records.

Q. Except what you see by the papers in your office?

A. Yes, sir.

Mr. BAKER: These papers show when they were filed there?

A. Yes, sir.

Q. By the endorsement?

A. There is an endorsement on the back of each instrument.

(S'g'd) CHARLES R. FORSTER.

Subscribed and sworn to before me this 5th day of December.

(S'g'd) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

Mr. Baker then offered in evidence the following documents:

319 I offer in evidence from a package marked "Vault, Nov. 15, 1879," the following acceptances:

By the Detroit City Railway Company an acceptance of the ordinance of November 14th, 1879, marked "Acceptance 1" and hereto annexed.

Mr. HATCH: I object to it as not properly proven, and as incompetent and immaterial.

Mr. BAKER: I know the signature to this acceptance, it is that of Sidney D. Miller.

Mr. HATCH: Mr. Baker's stating that the signature of Mr. Miller is his original handwriting, it will be admitted.

Mr. BAKER: I offer in evidence the acceptance under the same date of the ordinance of November 14th, 1879, by the Cass Avenue Street Railway Company.

A copy of the acceptance is hereto annexed and marked "Acceptance No. 2."

Mr. HATCH: I make the same qualified objection.

Mr. BAKER: I next offer in evidence the acceptance of the same ordinance by the Congress & Baker Street railroad.

A copy of the same is hereto annexed and marked "Acceptance No. 3."

The same qualified objection was made to this document.

Mr. BAKER: I next offer in evidence an acceptance of the same ordinance by the Detroit city railway, the Detroit Grand Trunk Junction Street railway, and the Central Market, Cass Avenue & Third Street Railway Company, the two last-named companies being the assignors of the two preceding companies, the Congress and Baker Street and the Cass Avenue.

A copy of the same is hereto annexed and marked "Acceptance 4."

Same objection.

Mr. BAKER: I offer in evidence the acceptance of the
320 Detroit city railway of the ordinance of December 11th, 1880, for a right of way on Farrar street.

A copy of the same is hereto annexed and marked "Acceptance 5."

Mr. HATCH: The same form of objection is made to this paper.

Mr. BAKER: I offer in evidence the acceptance of the Detroit city railway of the ordinance of July 8th, 1882, providing for a double track on Griswold street.

A copy of the same is hereto annexed, marked "Acceptance 6."

Same objection.

Mr. BAKER: I offer in evidence the acceptance of the Detroit city railway of the ordinance of March 29th, 1884, extending the double track from Jefferson avenue to Third street.

A copy of the same is hereto annexed and marked "Acceptance 7."

Mr. BAKER: I offer in evidence the acceptance of the Detroit city railway of an ordinance approved July 21st, 1884, providing for an additional track on the Campus Martius. It has the same signature attached to it.

A copy of the same is hereto annexed, marked "Acceptance 8."

Same objection.

Mr. BAKER: I offer in evidence the acceptance of the Detroit city railway of the ordinance approved January 5th, 1885, authorizing and providing for the construction of the Brush & Russell Street line. It has the same signature.

A copy of the same is hereto annexed, marked "Acceptance 9."

Same objection.

Mr. BAKER: I offer in evidence the acceptance by the Detroit city

railway of an ordinance approved July 31st, 1885, providing
321 for the construction of the Trumbull Avenue line. Signed by Mr. Miller.

A copy of the same is hereto annexed, marked "Acceptance 10." The same objection.

Mr. BAKER: I offer in evidence the acceptance by the Detroit city railway of the ordinance of September 1st, 1886, extending the Michigan Avenue double track from Thirteenth and One-half street to Twenty-fifth street, also the accompanying agreement, both being signed by Mr. Miller.

A copy of the same is hereto annexed, marked "Acceptance 11." Same objection.

Mr. BAKER: I offer in evidence the acceptance of the Detroit city railway of an ordinance approved July 26th 1887, extending the Cass Avenue and Third Street line to the Holden road and along the Holden road to the railroad crossing.

A copy of the same is hereto annexed, marked "Acceptance 12." Same objection.

Mr. BAKER: I offer in evidence the acceptance by the Detroit city railway of an ordinance approved October 27th, 1888, for an extension of the Trumbull Avenue line to the crossing. It has the same signature.

A copy of the same is hereto annexed, marked "Acceptance 13." Same objection.

Mr. BAKER: I offer in evidence—not being able to find the acceptance, but being able to find the accompanying bond, and I file the bond to show the acceptance by the Detroit city railway of the ordinance of January 3d, 1889. Undoubtedly the original
322 acceptance has been mislaid, but there is a bond that shows it is accepted. I know all the signatures to that bond, except one, that of Truman Newberry.

Mr. HATCH: We will take your statement as evidence. I object to it as incompetent and immaterial.

The bond is marked "Acceptance 14" and a copy of the same is hereto annexed.

Mr. BAKER: I offer in evidence a resolution of the common council of the city of Detroit, adopted on March 4th, 1884, and found in the Journal of the Common Council for that date at p. 62.

A copy of the same is hereto annexed, marked "Acceptance 14½."

Mr. BAKER: In that connection I offer in evidence the acceptance of the Detroit city railway, filed March 17th, 1884. I know the signature. It was signed by George Hendrie.

A copy of the same is hereto annexed, marked "Acceptance 15."

Mr. HATCH: I repeat the objection.

Mr. BAKER: I next offer in evidence the acceptance of the Detroit city railway of an ordinance passed over the mayor's veto January 4th, 1887, providing for an adjustment of the controversy between the city and the company in regard to taxation.

A copy of the same is hereto annexed, marked "Acceptance 16." The same objection is made to this paper.

Mr. BAKER: I offer in evidence extracts from the proceedings of

the common council of June 30th, 1891, July 1st, 1891, and July 7th, 1891, found on pp. 520, 521, 541, 542, 553 and 554 of the Journal of that year; these extracts showing the ordinance of 1891 passed by the common council; and the veto message of the mayor.

323 Copies of the same are hereto annexed, marked "B 7," "B 8," "B 9."

Same objection.

Mr. BAKER: I next offer in evidence an ordinance approved February 4th, 1893; and an amendatory ordinance approved February 26th, 1895, relating to the sale of workingmen's tickets on cars, to be found in the Journal of the Common Council for that year, pp. 63, 85.

Copies of the same are hereto annexed, marked "B 10," "B 11."

JERE. C. HUTCHINS, recalled for further examination-in-chief.

Examined by Mr. BAKER:

Q. Can you now give us the figures for the months of January, June and October, 1894?

Mr. HATCH: While you are about it, take in the months of July, August, September and October.

Mr. BAKER: Very well.

A. I have not the memoranda with me, except for the months Mr. Baker mentions.

Mr. HATCH: I wish you would get them covering those dates.

WITNESS: The records of our office show that in January, 1894, there were 1,874,141 revenue passengers carried. There were 238,657 transfers; 65,087 persons were carried on employés tickets. There were of the revenue fares collected 21.43 per cent. cash fares; 65.15 per cent. six tickets for a quarter, and 13.42 per cent. of eight tickets for a quarter. The percentage of transfers was 12.70 per cent.

In June, 1894, there were carried a total of 2,097,410 revenue passengers; there were 294,384 transfers; there were 66,644 employés carried; there was 24.15 per cent. of cash fares; 63.07

324 per cent. six-for-a-quarter tickets; 12.78 per cent. eight-for-a-quarter tickets. The percentage of transfers was 14.06 per cent.

In October, 1894, there was a total of 2,006,961 revenue passengers carried; 262,231 transfers; 66,968 employés carried; 22.44 per cent. cash fares; 62.14 per cent. six-for-a-quarter tickets; 15.42 per cent. workingmen's tickets, or eight-for-a-quarter tickets; percentage of transfers, 13.10 per cent.

Mr. HATCH: You cannot give the corresponding data for July, August, and September?

A. I was advised that the desired data was not with reference to those months. I have given you the data I supposed was wanted. I can look up the data with reference to those months. I could give it very readily for each month of 1894.

Q. You recollect that Mr. Baker inquired about January, June

and October, but I would like it for July, August and September. I wish you would furnish me that and add it to your deposition.

A. July, 1894—revenue passengers, 2,161,102; transfers, 330,539; employés, 67,778; percentage of cash fares, 27.20; of six-for-twenty-five-cents tickets, 61.33; of eight-for-twenty-five-cents tickets, 11.47; and of transfers, 11.47.

August, 1894—revenue passengers, 2,060,129; transfers, 327,098; employés, 69,272; percentage of cash fares, 25.25; of six-for-twenty-five-cents tickets, 60.69; of eight-for-twenty-five-cents tickets, 14.06; and of transfers, 15.87.

September, 1894—revenue passengers, 2,120,340; transfers, 308,052; employés, 66,733; percentage of cash fares, 25.22; six-for-twenty-five-cents tickets, 61.72; eight-for-twenty-five-cents tickets, 13.06; transfers, 14.53.

Cross-examination.

Mr. HATCH:

325 Q. Can you this morning tell me at how many points, by the orders of last June, you gave transfers to, so I may know how many points your exchange in policy strikes out of that transfer system. I understood you to say you thought you could give us that information?

A. I could, but I have not looked up the data. The transfer system in effect now is practically the same as it was prior to June of this year; except that in addition there are now a number of through cross-town lines over which passage is given for one rate of fare without the issuance of transfers.

(Signed) JERE. C. HUTCHINS.

Subscribed and sworn to before me this 3rd day of December, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

FRED. A. BAKER, a witness produced on behalf of the complainant, being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

I live in Detroit, and I have lived there continuously since 1872. I have been familiar with street railway matters here for the last 15 or 20 years. I know of no grant of street railway franchises being made by the city of Detroit from November 19, 1879, down to December 4, 1894, to any company other than the Detroit city railway, with the single exception of an electric grant to the Highland Park railway, from the railroad crossing on Woodward avenue northerly to the city limits. At that time the street railway along Woodward avenue south of the railroad was a horse railroad.

There may have been one other grant to the company to build on St. Aubin avenue, but it was never accepted or built. I know this from personal knowledge and from familiarity with the records.

326 Another exception was an electric grant to the Dix Avenue Railway Company in the westerly part of the city; that grant being made at the time when the Baker Street line was a horse-car line. The Dix Avenue grant and the Highland Park grant were both made in 1886.

FRED. A. BAKER.

Subscribed and sworn to before me this 5th day of December, A. D. 1895.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

On November 26, 1895, the parties met to introduce further proofs, Mr. Fred. A. Baker appearing on behalf of the complainant, and Mr. Herschel H. Hatch appearing on behalf of the defendants, and the examination was proceeded with as follows:

Mr. HATCH: I offer in evidence the report of a special committee, together with an ordinance found in the proceedings of the common council under date of December 27, 1888, on page 852 of the published proceedings for that year.

A copy of the same is hereto annexed and marked Exhibit "C 1."

I offer in evidence another report of the committee from the proceedings of the same year, found on page 853.

A copy of the same is here*by* annexed and marked Exhibit "C 2."

I offer in evidence another report found on page 855 of the Journal of the Common Council for the same year.

A copy of the same is hereto annexed, marked Exhibit "C 3."

I offer in evidence an ordinance of the common council of the city of Detroit entitled An ordinance to authorize the Fort Wayne & Elmwood Railway Co. to extend and operate its railway
327 in, upon and through certain streets and avenues of the city of Detroit, which report is found in the Journal of the Common Council for 1888 at page 879, and was approved January 3rd, 1889.

A copy of the same is hereto annexed, marked Exhibit "C 4."

I offer in evidence an ordinance of the common council of the city of Detroit entitled An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884 of the City of Detroit and of all amendments and supplements thereto, approved January 3rd, 1889, and found in the journal of the proceedings for that year, at page 15.

A copy of the same is hereto annexed and marked Exhibit "C 5."

EXHIBIT "A 1."

Jour. 1862, p. 204.

Resolutions.

An ordinance to amend an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit."

Be it ordained by the common council of the city of Detroit that section 1 of the ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit," approved November 24, 1862, be and the same *are* hereby amended so as to read as follows:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in Eben N. Wilcox and his associates who may be approved by the council, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts,
328 side tracks and switches, in and along the course of the streets of and bridges in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SEC. 18. If said grantees or their assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, then the rights and privileges herein granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof, provided the council does not extend the time. Provided: That if said grantees shall be delayed by the order or injunction of any court, and said order or injunction shall not be obtained at the instance or by the connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SEC. 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes bearing $7\frac{3}{10}$ per cent. interest, which deposit shall be security for the completion by said grantees of the lines of railway which they are required to construct and complete by the days named respectively therefor, and if said railway shall not be completed within the time so specified the sum so deposited shall be forfeited to the city.

Approved December 27th, 1862.

W. C. DUNCAN, *Mayor.*

Attest:

FRANCIS PRAMSTALLER,
City Clerk.

329 EXHIBIT "A 2."

Jour. 1863, p. 214.

Resolutions.

An ordinance to amend an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit."

Be it ordained by the common council of the city of Detroit:

SECTION 1. That sections two, three, four, five and twenty-one, of the ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in and through the streets of the city of Detroit," approved November 24th, 1862, and the ordinance amendatory thereof, approved December 27th, 1862, be and the same are hereby amended so as to read as follows:

SEC. 2. The said grantees are by the provisions of this ordinance exclusively authorized to construct and operate railways as herein provided on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson avenue through Brush or Beaubien streets to Atwater street; and from Jefferson avenue at its intersection with Woodbridge to Third street, up Third street to Fort street and through Fort street to the western limits of the city; and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the common council of the said city of Detroit, and assented to in writing by said corporation, organized as provided in section first of this ordinance.

And provided the corporation does not assent in writing
330 within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid at their own cost and expense. Provided always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward Avenue railways in such direction that said railways shall be continued down to and form each of them one continuous route to Jefferson avenue. Provided always, that said railroad down Gratiot street may be continued to Woodward avenue through State street, or through Randolph street and Monroe avenue and the Campus Martius, as the grantees or their assigns under this ordinance may elect.

SEC. 3. The railways through all the streets shall be laid in the center thereof if on a single track, and if on a double track the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks and leave a space between of at least eighteen inches, and the gauge of the track shall be at least four feet eight and one-half inches, and so

as to accommodate the most common width of carriage wheels. Provided, however, that where a double track shall not be laid in the first instance and a second track shall afterwards be required, such second track may be laid upon either side of the first. And provided, further, that in all streets which are not paved, or where plank roads are laid, the tracks of said railways may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway and place cars thereon for public use, they may at any time thereafter within five years, build a second track,
331 so that they do not interrupt the running of their cars on the first completed track, provided the consent of the common council is first obtained.

SEC. 4. The track of said railways shall be laid of such rails as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets and shall conform to the grades thereof as now established, or as they shall from time to time be re-established or altered; and in case of grading, paving or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees, and in all streets or parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon; and as shall be authorized and approved by the city surveyor. The grantees and their assigns shall be required to keep the surface of the streets inside the rails and for two feet four inches outside thereof in good order and repair, and all snow, ice, dirt and filth cleared and removed from the same at the expense of the grantees. Provided, however, that upon the paved portions of said streets, the materials for repaving shall be supplied at the expense of the city.

SEC. 5. The routes of all said railways shall commence in the Woodward Avenue road at Campus Martius, from thence running on their several courses to the outer limits of the city. Provided, that in collecting fare, those portions between Atwater, through Brush or Beaubien streets and through Woodward avenue to Jefferson avenue, and between Brush or Beaubien and Third streets on Jefferson avenue and Woodbridge street shall be respectively deemed to belong to either of the above routes, any portion of which is then being traveled continuously by any one passenger at the same time, and shall pay only one fare.

332 SEC. 21. Said grantees shall, on or before the tenth day of January, A. D. 1863, deposit with the controller of said city the sum of five thousand dollars in money, or in United States stocks, or in Treasury notes bearing $7\frac{3}{10}$ per cent. interest, which deposit shall be security for the completion, by said grantees, of the lines of railway which they are required to construct and complete on or before the 1st day of October, A. D., 1863; and if these said railways shall not then be completed, the sum so deposited shall be forfeited to the city: Provided, however, that if said grantees or their assigns cannot procure the requisite amount of rail of the

Philadelphia or other suitable pattern to build said railways within the time specified, with a suitable and competent force, then the time shall be extended until such rail can be obtained and laid with a suitable and competent force. And provided further, that the time for the completion of said roads be extended not to exceed nine months, upon good and sufficient reasons being given, that the iron rail cannot be procured.

Approved January 12th, 1863.

WM. C. DUNCAN, *Mayor.*

Attest:
FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "A 3."

Jour. 1863–'64, p. 140.

Petitions presented.

Report of the Committee on Streets.

To the honorable the common council of the city of Detroit.

GENTLEMEN: The committee on streets, to whom was re-
333 ferred the petition of E. B. Ward and twenty others; also of Henry Doty, and one hundred and thirty-three other citizens on Fort street, for amendment to the street railway ordinance, so as to run the Fort Street route direct to the Campus Martius instead of by the way of Third street and Jefferson avenue, together with the remonstrance of Mr. Joy and others, beg leave to report that they have had the same under consideration.

The petitions are based upon the difference in distance and time, which, it is claimed, would be a serious inconvenience. The additional distance each trip to be traveled by each passenger as the route is now, over what would be required by the direct route is some 1,500 feet, or near a third of a mile. The additional stoppages at street crossings would be twenty-three, counting two for each street.

The portion of Fort street, to say nothing of all others, who live in the vicinity of that street, who will be put to this loss of time and extra travel to reach the same point, will be about as one mile and a half of street is to less than half a mile. What reason is there why the greater number should not be accommodated? The citizens between Third street and Woodward avenue say, "We wish to be retired. We have set our double rows of trees and our street is graveled, and we have built ornamental houses and churches, and we ought not to be disturbed. Besides, the city has allowed us to narrow the carriage road for our lawn, and if a rail track be put down it will be too narrow for carriages on each side, and we shall have to pave the street or else in muddy times it will be impassable between the car track and the curb."

The committee have examined these objections; they think it is a mistake that the street is too narrow. They find that two carriages

can go abreast on each side of the track. If the summit of the street is too high to admit carriages on each side of a track
334 without danger or inconvenience, it must be too high to allow it without a track. Yet we see the whole width of the street or carriageway traveled now without danger or inconvenience. In regard to the necessity of paving each side of the car track, it seems to your committee that the reasons of their remonstrance are equally unsound. If the street is macadamized as Mr. Joy says it is, then no paving can be necessary, because there can be no mud where the road is graveled or macadamized. It is only when you get off the graveled way that you get into the mud. Any one who has traveled the Detroit and Birmingham road, or any of our graveled roads, knows this.

But the fact is, Fort street is not graveled or macadamized, and the reason is not only unsound, but the fact is untrue.

Instead of being a detriment, a car track, laid as it is in the other streets, would be an improvement. It would be always in order, and take all the heavy travel of loaded drays, etc., and Fort street would not present such a mud-hole appearance as it does now after every rain.

If the citizens above Third street can be obliged themselves to gravel or macadamize Fort street, in consideration of being permitted to take up twenty feet extra ground on each side for lawns and trees, let them have it done properly and a rail track won't hurt it. If it is not done, they should not complain if paving becomes necessary. Other citizens of other streets have been obliged to pave in front of their premises without any exclusive privilege of trees and lawns or any other exemption whatever. The fact that Fort Street people have had exclusive privileges does not entitle them to any more.

One would naturally suppose that it would entitle them to less consideration than their fellow-citizens who have had no such privileges.

It has been suggested that the route be changed to Lafayette
335 street. The objection of unpaved street applies with greater force to this street, which has no pavement at all. But the principal objection is that the route would run too far away from the river and too near Michigan avenue, which is also to have a track.

In conclusion, your committee are of the opinion that the street railway is a just public benefit, that the most natural route for Fort street is the direct one asked for, straight and shorter, and that it will benefit the largest number, which ought to be our rule in matters which concern the public.

All of which is respectfully submitted.

PAUL GIES.

Accepted and placed on file.

On motion of Ald. Farrand, the ordinance was then put upon its final passage, was amended and passed as amended by the following vote:

Yeas—Ald. Barker, Bond, Cicott, Farrand, Frost (10th), Gal-

lagher, Gies, Gorton, Lingeman, McGonegal, McGinnis, Phelps, Purcell, president—14.

Nays—None.

On motion of Ald. Farrand, the title of the ordinance was so amended as to read, "An ordinance regulating the construction and use of the tracks of the Detroit city railway."

EXHIBIT "A 4."

Journal 1863-'65, p. 150.

Third Reading of Ordinances.

An ordinance regulating the construction and use of the tracks of the Detroit city railway.

It is hereby ordained by the common council of the city of Detroit, as follows:

SECTION 1. Permission is hereby given to the Detroit rail-
336 way to build its road and track on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot street, from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, as provided by the ordinance approved November 24th, 1862, and the amendments thereto, (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section 21 of said ordinance).

SEC. 2. As a condition of the acceptance of this permission, the said Detroit city railway may, and shall complete its road and track on Fort street, Michigan avenue and Gratiot street, as provided by the aforesaid ordinances by the first day of October, 1864, and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

SEC. 3. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement, the said railway may build its track a sufficient distance from the plank road in those streets, respectively to leave the grade track of said plank road clear and allow teams and vehicles to pass between said track, and said plank road, and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the T rail which is used for street railways, and weigh not less than 33 pounds to the yard.

SEC. 4. The said railway is hereby authorized to extend its track and run its cars through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such part of said street, westerly of the center as they shall agree upon with the Michigan Central Railroad Company.

SEC. 5. The tracks upon Jefferson avenue, Woodward ave-
337 nue, Michigan avenue and Gratiot street, shall each be considered and run as one route, and subject its passengers to the payment of a single fare each; provided, however, that all cars running north of Jefferson avenue, shall run to and from Jefferson

avenue, and that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue, shall be considered as making a portion of each of said routes respectively.

SEC. 6. The Detroit city railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real-estate owners as are affected thereby, may and is hereby authorized to build a track from its present track on Jefferson avenue to Elmwood cemetery, and run its cars thereon at such times as will accommodate the public; provided, however, no person shall be charged more than one cent either way, on this track and said railway are also authorized to run a track and their cars to Mt. Elliott cemetery, along Mt. Elliott avenue, and charge the same rate of fare as to the said Elmwood cemetery.

Approved August 19th, 1863.

FRANCIS B. PHELPS, *Acting Mayor.*

Attest:

FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "A 5."

Jour. 1863–'64, p. 169.

Petitions Presented.

By Ald. Elwood:

Of E. N. Wilcox, secretary of Detroit Street Railway Company, asking further time to complete certain street railways.

338 Leave being granted, Ald. Elwood offered in connection with the above petition, the following:

Resolved, That permission is hereby given to the Detroit city railway to complete the routes of street railways, provided to be finished by the first of October, next, to complete the same on or before the 15th of October next, without prejudice to the company or those making the special deposit provided for by the street railroad ordinance, and that such completion by the 15th of October next, shall be deemed and accepted as a full compliance with the conditions and terms of such deposit.

Adopted as follows:

Yeas—Ald. Elwood, Farrand, Frost, 10th, Gies, Hoek, Le Favour, Lingeman, McGinnis, McGonegal, Purcell, president—12.

Nays—None.

EXHIBIT "A 6."

Jour. 1864, p. 287.

Unfinished Business.

An ordinance further regulating the construction and use of the tracks of the Detroit city railway.

It is hereby ordained by the common council of the city of Detroit, as follows:

SECTION 1. Permission is hereby given to the Detroit city railway

to build its road and track on and through Fort street, from Third street to Woodward avenue, instead and in lieu of on and through Third street, from Fort street to Woodbridge street, as now provided by the ordinance regulating the building of the tracks of said railway, in which case said railway will be relieved of its obligations to build through Third street as aforesaid.

339 SEC. 2. Permission is also hereby given to said railway to build its road and track along and through Stanton street, from Fort street to the River road, and thence on and through the River road to the westerly limits of the city, and such building shall relieve said railway from its obligations to build its road and track from said Stanton street, along said Fort street, to said westerly limits of the city, and the said railway is hereby authorized to build its tracks on Fort street from the railroad crossing through Stanton street and River road to the city limits with T rail similar and of equal weight to that used on Michigan avenue.

SEC. 3. The road and track of said railway from said westerly limits through said river road, Stanton street and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger.

Approved January 4th, 1864.

WM. C. DUNCAN, *Mayor.*

Attest:

FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "A 7."

Jour. 1864–'65, p. 163.

Communications from City Officers.

On motion of Ald. Weir, an ordinance granting certain rights and privileges to the Detroit city railway, was taken from the table, put upon its final passage, read the third time by sections, was amended, and passed as amended by the following vote:

340 Yeas—Ald. Bond, Cicott, Frost, Gallagher, Gies, Knight, Lafferty, McGinnis, McGonegal, Meldrum, Sheley, Weir, president—13.

Nays—None.

EXHIBIT "A 8."

Jour. 1864–'65, p. 169.

Communications from City Officers.

CITY OF DETROIT, MAYOR'S OFFICE, *Sept.* 27, 1864.

To the honorable the common council.

GENTLEMEN: The ordinance passed at your last session granting certain rights and privileges to the Detroit city railway, I return without my approval.

The first, second, and fourth sections of said ordinance are correct and proper, and if they stood alone I would approve the same.

The original ordinance under which the street railway company were authorized to construct a railway on Fort street from the west line of the city to Third street was passed now nearly two years ago.

The amendment by which the company were authorized to extend the railway to Campus Martius was passed in the last year, and approved by my predecessor.

There has been heretofore ample time for the present company to have completed the construction of the railway upon that street, as it was bound to do in consideration of the privilege granted it.

In the meantime for now two reasons the street has remained unimproved and unpaved, because the citizens upon it have not known what was to be the action of the street railway company.

The general wish has been, I believe, to have the street
341 paved with the Nicholson pavement, making a smooth, easy and durable road. The uncertainty as to the future of the street and as to the construction of the railway upon it, and of the mode in which the surface of the street shall be constructed, in case the railway shall be built, has rendered it impossible to adopt any plans for its improvement, until the street has at times become almost impassable, and instead of being one of the best constructed, as it should be, has become the worst street in the city. This state of things, it is clear, will continue as long as there remains the power and the right to construct a railway there, and the will and the ability to do so is wanting.

There is and can be no necessity for this state of things, and it ought not to be permitted to exist, and I have therefore felt compelled to withhold my approval from this ordinance.

The privilege of constructing a railway in that street is doubtless valuable, and there can be no difficulty in procuring it to be done at any time, but the power and the right to construct it ought not to be continued in any one company for one, two or three years, to the exclusion of all others, when that company is either unwilling or unable to build it, and thus standing in the way of all progress and improvement upon the street in the meantime.

Against such a grant of power, as is well known, the citizens upon that street have remonstrated almost unanimously, and when the inconveniences and detriment to the public interest are so great, by its continuance as is authorized by this ordinance, I cannot but feel it a clear duty to withhold my approval.

In so doing, I may add that whatever may be my personal opinion, or wishes, upon the subject of the proposed railway, whenever parties shall ask the privilege of constructing it who are both willing and able to do it without delay, and thus occasion no
342 unnecessary inconvenience —. In this case I am guided solely by the reasons above stated.

It will be in the power of the common council at any time when parties are prepared and ready to construct the railway, at that

time, to grant the right if it shall then be deemed best for the public interest.

It is due to itself, and is a part of its duty to the public, until that time, to retain and exercise full control over the street, and when it parts with that control to any extent it should be in such a way and with such restrictions and provisions as will secure the least possible inconvenience.

Very respectfully, K. C. BARKER, *Mayor.*

On motion the vote by which the ordinance was passed, was reconsidered.

The question being put, "Shall the ordinance pass over the mayor's veto," Ald. Weir left the council-room, whereupon the council for want of quorum adjourned.

FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "A 9."

Jour. 1864–'65, p. 171.

An ordinance granting certain rights and privileges to the Detroit city railway.

SECTION 1. The Detroit City Railway Company is authorized to connect their car depot on Second street with their main track, by constructing a branch track from their main track to said car-house, either through Second street or from Third street through the alley, between Jefferson avenue and Front street.

343 SEC. 2. The time for completing the road of said company on Gratiot street is hereby extended to November 1, 1865. Provided, however, that said company shall extend their track as far as Chene street, on or before the 20th day of November next.

SEC. 3. The track of said company shall be laid on that part of Gratiot street which is occupied by the Plank Road Company in such position as shall be agreed on between the Railway and Plank Road Companies: Provided, however, that unless the line agreed on shall be along the center of said street, such agreement shall be first reported to and approved by the council.

SEC. 4. This ordinance shall take immediate effect.

Approved October 8, 1864.

K. C. BARKER, *Mayor.*

Attest:

FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "A 10."

Journal 1865–'66, p. 4.

Reports of Committees.

By Ald. Gies:

Resolved, That the city counselor and attorney be, and they are hereby directed to report to the council, at its next meeting, whether

the City Street Railway Company has complied with the ordinance in regard to the completion of their several routes.

Adopted.

344 EXHIBIT "A 11."

Jour. 1865–'66, p. 6.

Communications from City Officers.

From the city attorney and counselor.

APRIL 11, 1865.

To the honorable the common council.

GENTLEMEN: In compliance with are solution offered and adopted at your last session, concerning the progress of the street railroad company, in complying with the requirements of the ordinance relative to the completion of their several routes, the undersigned respectfully report that nothing has been done upon the Gratiot street beyond or east of Dequindre street, and upon Grand River no work whatever has been commenced.

Very respectfully,

WM. GRAY,
City Counselor.
T. H. HARTWELL,
City Attorney.

Accepted and placed on file.

EXHIBIT "A 12."

Jour. 1865–'66, p. 43.

Communications from City Officers.

To the honorable the common council:

The undersigned, to whom the question was referred, respectfully reports: That by section 18 of the street railway ordinance, grantees therein named forfeits the rights granted in respect to each route not commenced and completed within the time prescribed,
345 but the non-completion of the Grand River Street route does not work a forfeiture of the right of the company to run and operate their cars upon other routes when the road is completed; it merely forfeits their rights in and to the Grand River Street route.

Respectfully,

WM. GRAY.

May 21, 1861.

Accepted and placed on file.

EXHIBIT "A 13."

Jour. 1865–'66, p. 46.

Resolutions.

Eighth ward.

By Ald. Purcell:

Resolved, That the city counselor be and he is hereby requested to report to the council as soon as convenient whether the failure of the Detroit City Railway Company to complete the road on Grand River street within the time specified by their charter, give to this council the authority to grant to any other company power to build, maintain and operate a railroad on said street, from the western limits of said street to Woodward avenue, and on Woodward avenue south to its junction with Jefferson avenue.

Adopted.

346 EXHIBIT "A 14."

Jour. 1865–'66, p. 60.

Communications from City Officers.

From the city counselor.

To the honorable the common council:

In compliance with your resolution of May 29th, I respectfully report:

The City Railway Company was required to complete a road on and through Grand River street by the 31st of March, 1863.

Ordinances, p. 201, sec. 6.

The company having failed to do so, all rights granted in reference to said route are forfeited.

Ordinances, p. 203, sec. 8.

That portion of Woodward avenue which lies between Grand River street and Jefferson avenue is a portion of this route.

Ordinances, p. 206, sec. 5.

The rights of the present company in reference to this route being forfeited, I am of opinion that the council can now give authority to any other company or persons to build a railway on and through Grand River street from the western limits to Woodward avenue, and thence on and through Woodward avenue to Jefferson avenue.

Respectfully, WM. GRAY.

June 6th, 1865.

Accepted and adopted.

347 EXHIBIT "A 15."

Jour. 1866–'67, p. 313.

Resolutions.

Eighth ward.

By Ald. Considine:

Resolved, That the controller be and he is hereby directed to invite capitalists to construct a street railway from Jefferson avenue to Grand River street, on Woodward avenue, and west on Grand River street as far as may be agreed upon.

Referred to a special committee of three.

The chair appointed Ald. Purcell, Codd and Considine as such committee.

EXHIBIT "A 16."

Jour. 1866–'67, p. 317.

Reports of Committees.

To the honorable the common council.

GENTLEMEN: The special committee to whom was referred the resolution of Ald. Considine, directing the controller to invite capitalists to build a street railway from Jefferson avenue on Woodward avenue, to Grand River street, and up said street to such point as may be agreed upon, have had the subject under consideration, and can see no good reason why the resolution should not be adopted, for there is no part of the city which needs the accommodation of a road as much as this large district. This is one of the lines which the Detroit City Railway Company pledged themselves to build by the 1st of March, 1865, but having failed to perform this part
348 of their agreement with the city, which they were in good faith bound to do, and the security placed in the hands of treasurer for the fulfillment of this part of the agreement having been given up to the company, there are no means of compelling them to complete this line.

If the residents along the line of this thoroughfare are to enjoy the convenience of a street railway, we believe it will have to be built by other parties than this company. We would therefore recommend the adoption of the resolution.

All of which is respectfully submitted.

WM. PURCELL.
JOHN CONSIDINE.

Accepted and adopted as follows:

Yeas—Ald. Allison, Bagley, Considine, Coots, Copland, Kremer, Laible, Langley, Lebot, Olewine, Purcell, Ruehle, Schmittdiel, Stewart, Weir—15.

Nays—None.

EXHIBIT "A 17."

Jour. 1868, p. 17.

Petitions Presented.

By Ald. Considine:

Of J. P. Mansfield and others for permission to erect street railway up Woodward avenue and through Grand River street to the line of the Michigan Southern railroad.

Referred to committee on street railways, and the city attorney to bring in ordinance.

349 EXHIBIT "A 18."

Jour. 1868, pp. 119, 120.

Presentation of Petitions.

Of D. B. Plumer and 125 others for extension of Grand River Street railway.

Leave being granted, Ald. Bond offered the following resolution:

By Ald. Bond:

Whereas a numerously signed petition has been presented to the common council from the citizens located in and near Michigan avenue, asking for the extension of the track of the Detroit city railway from its present western terminus on said avenue to the city limits.

And whereas, said avenue has been ordered paved to the amount of $25,000, and said railway company can conveniently use the T rail to be taken up beyond the point which shall be reached by the expenditure of said amount; and believing that public necessity requires the further extension of the track beyond its present terminus on Michigan avenue; therefore

Resolved, That the common council of the city of Detroit, acting under its reserved rights as contained in chap. XCIII (title XV), sec. 6 (*pp.* 200), of the Revised Ordinances of 1863, viz: "And the revision thereof at such times as the public necessity may require," do hereby order and notify the Detroit City Railway Company to build and extend their track (and run the necessary cars) from its present terminus on Michigan avenue to Twenty-fourth street on said avenue, within sixty days from the passage of this resolution.

Resolved, That the city attorney be, and he is hereby in-
350 structed to notify the Detroit City Railway Company of the order of the common council under the ordinance, and if they shall fail to comply with all the legal enactments thereof, that the said attorney shall by the proper proceedings at law, enforce all the stipulations and provisions of the ordinances relating to said company.

Adopted.

EXHIBIT "A 19."

Resolutions.

Jour. 1873, p. 359.

An ordinance authorizing the "Detroit City Railway Company" to maintain a double track on Jefferson avenue.

It is hereby ordained by the common council of the city of Detroit.

SECTION 1. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and throughout Jefferson avenue, in the city of Detroit.

Provided, expressly, that if hereafter the pavement on said avenue shall be extended or said avenue shall be ordered repaved, the said grantee or company shall contemporaneously with such paving or repaving at its own sole expense, excavate, grade, and pave or repave, all the portion of said avenue lying within the rails of each track and between the tracks, and shall also keep their portion of the said tracks, and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street; said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or
351 with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

SEC. 2. This ordinance shall take immediate effect.

Approved July 18, 1873.

HUGH MOFFAT, *Mayor.*

Attest:

CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "A 20."

Jour. 1875, p. 5.

Resolutions.

An ordinance to amend section three (3), chapter forty-eight (48), of the Revised Ordinances of Detroit of 1871.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That section three (3) of chapter forty-eight (48) of the Revised Ordinances of 1871 be, and the same is hereby, amended by striking out the words "within five (5) years."

SEC. 2. The Detroit City Railway Company is hereby authorized to construct a second track on Woodward avenue in accordance with the provisions of the ordinance above referred to.

Passed, notwithstanding the veto of the mayor, by the following vote:

Yeas—Ald. Botsford, Broeg, Dunlap, Finnegan, Garrison,
352 Grelling, Grosfield, Heames, Hinchman, Horn, O'Keefe,
Owen, Schmittdiel, Thompson, Welch and president—16.
Nays—Ald. Baxter, Christian, Guthard and Hough—4.

Detroit, January 11, 1875.

CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "A 21."

Jour. 1875, p. 545.

Resolutions.

An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue from Woodward avenue to Sixth street.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue from Woodward avenue to Sixth street in the city of Detroit. It is, however, expressly understood and provided: that if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include
353 the cost of paving, repaving, and material for the same, grading, excavating, removing of earth, and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

SEC. 2. In case of failure on the part of said company to comply strictly with the provisions of this ordinance, the privileges and consent hereby granted shall be forfeited.

SEC. 3. This ordinance shall take immediate effect.

Accepted. And the ordinance was read twice by its title, as follows: "An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue from Woodward avenue to Sixth street."

Approved October 1, 1875.

WM. G. THOMPSON,
Acting Mayor.

Attest:
CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "A 22."

Jour. 1876, p. 493.

Reconsideration.

(No. 3.)

An ordinance to amend section 1 of an ordinance approved October 1st, 1875, entitled, "An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue, from Woodward avenue to Sixth street."

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That section 1 of an ordinance, approved October 1st, 1875, entitled "An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue
354 from Woodward avenue to Sixth street, be and the same is hereby amended so as to read as follows:

SECTION 1. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the city of Detroit. It is, however, expressly understood and provided: that, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portions of said avenue lying within the rails of each track and between the tracks, and also two feet nine inches of the outer rail of each track, and shall also keep their portion of the said tracks and two feet nine inches outside the outer rail of each track in proper condition and repair, and the two inner rails shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council. Any provision or condition in the ordinance creating said company contravening this amendment is hereby repealed.

SEC. 2. This ordinance shall take immediate effect.

Approved August 18, 1876.

ALEXANDER LEWIS, *Mayor.*

Attest:

CHAS. H. BORGMAN, *City Clerk.*

355 EXHIBIT "A 23."

Jour. 1877, p. 520.

Communications from City Officers.

An ordinance to amend section 1 of an ordinance approved August 18th, 1876, entitled "An ordinance to amend section 1 of an ordinance approved October 1, 1875, entitled 'An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue, from Woodward avenue to Sixth street.'"

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That section 1 of an ordinance approved August 18, 1876, entitled "An ordinance to amend section 1 of an ordinance approved October 1st, 1875, entitled 'An ordinance authorizing the Detroit City Railway Company to maintain a double track on Michigan avenue, from Woodward avenue to Sixth street,' be and the same is hereby amended so as to read as follows:

SECTION 1. Permission, consent and authority are hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue, from Woodward avenue to Thirteenth-and-a-half street, in the city of Detroit. It is, however, expressly understood and provided: That, as said avenue has already been ordered repaved, or if hereafter said avenue shall be ordered paved or repaved, the said grantee or company shall, contemporaneously with such paving or repaving, at its own sole expense, excavate, grade and pave or repave all the portion of said avenue lying within the rails of each track, and between the tracks, and shall also keep their portion of the said
356 tracks, and the space of two feet and nine inches outside the outer rail of each track, in proper condition and repair, and the two inner rails of its said tracks shall be laid equidistant from the center of the street. Said company shall thus pave or repave with the same material as shall be used for the paving or repaving of the balance of said avenue, or with material satisfactory to the common council, and the expense thereof shall include the cost of paving, repaving and material for the same, grading, excavating, removing of earth and all other necessary work, and the whole shall be done in a manner satisfactory to the common council.

SEC. 2. Any provision or condition in the ordinance creating said company, or of any ordinances amendatory thereof, contravening the provisions of this amendment, are hereby repealed.

SEC. 3. This ordinance shall take immediate effect.

Approved August 20, 1877.

ALEX. LEWIS, *Mayor.*

Attest:

CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "A 24."

Jour. 1879, p. 632.

Reports of Committees.

(Special.)

To the honorable the common council.

GENTLEMEN: Your committee on streets and ordinances, to whom was referred the communication of the Detroit City Railway Company, desiring a conference regarding the present relations of the company with the city, and the questions incident thereto, would respectfully report as follows:

357 It was made plain to your committee at the outset that there were many reasons intimately associated with the best interests of the city and the convenience of the people to commend the suggestion of conference as made by the company.

The first charter granted the Detroit City Railway Company was adopted in 1862, and constituted contract relations which are to terminate at the expiration of thirty years from said last-mentioned date. That charter was very meager in its provisions, and has long since proven utterly inadequate to subserve its important purpose. The result has been that from time to time during the past 17 years, as occasion warranted, the original charter or ordinance, has been supplemented and amended until the rights and obligations of the contracting parties are uncertain and confused. On portions of the line operated by the company certain duties attach, while upon other portions thereof the burdens imposed are of an entirely different nature. This is certainly an undesirable state of affairs, and should be remedied by provisions simple in design and uniform in operation.

Again, the burden of taxation is not, in the opinion of your committee, properly applied to the Detroit city and other railway companies. By virtue of a statute of the State *of* specific tax of one-half of one per cent. on the capital stock paid in, is imposed. Although this tax is unwarranted, as the State gives to the company no compensation in return therefor, still the city is powerless to change or in any other manner to interfere therewith, and no recommendation of your committee thereon would be of any avail. The only actual revenue which the company pays the city is the annual license fee of fifteen dollars imposed for each car operated. This is not a satisfactory method of obtaining revenue, and has none

358 of the ordinary principles which cover the exactions of license fees, nor yet, any of the recognized principles of taxation which sustain or commend it. Your committee believe it would be more equitable and also more profitable if the tax was imposed upon the revenues of the company, viz: that is a certain percentage on the gross receipts, payable at such times and in such manner as the common council may by ordinance provide.

Again, in the opinion of your committee, certain extensions of routes are demanded by the public, and such as are considered desirable will appear in the recommendation hereto attached.

Under all existing circumstances, and bearing future and mutual interests of both the city and the company in view, your committee would make the following recommendations, for favorable consideration of this council, and the acceptance of the company, viz:

First. The company should extend the line on Gratiot avenue to Chene street, within ninety days, and thence to the city limits as the council may require.

Second. The company should extend their Woodward Avenue line to Atwater street, and thence to the Detroit & Milwaukee depot; and they should run their Woodward Avenue lines of cars to and from that point so as to accommodate ferry and railway passengers.

Third. The Central Market, Cass Avenue and Third Street railway and the Grand Trunk Junction street railway should be operated under and subject to the provisions of the ordinance governing the Detroit City Railway lines; and the line of the latter, the Congress and Baker Street should be extended down Randolph to Atwater street so as to accommodate railway and ferry passengers.

Fourth. In lieu of license fee and taxes, and of the existing charges for paving and street supervisions, the company should pay into the city treasury a specific tax of one per cent. per
359 annum on their gross receipts, and should pay the entire cost of materials for as well as the cost of excavating, grading and paving, renewing, repairing and cleaning the roadway spaces which constitute their track, as the council may require, only reserving to the company the option to use on the surface of their roadways either cobblestone or some similar durable and proper materials.

Fifth. The powers and privileges conferred by the ordinance passed November 24th, 1862, should be extended and limited to thirty years from this date. Your committee has directed and the city attorney has prepared, and herewith transmits an ordinance to give effect to the recommendations herein made.

JOHN CHRIS. JACOB,
THOMAS MANNING,
F. G. RUSSELL,
JOHN MONAGHAN,
GABRIEL H. CHENE,
Committee on Ordinances.
WILLIAM C. MAYBURY,
City Attorney.

Following is the ordinance:

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereto, and for other purposes.

It is hereby ordained by the common council of the city of Detroit.

SECTION 1. The track of the Detroit City Railway Company's line

on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street within ninety days from this date, and from Chene street to the city limits within such
360 period as the common council shall by resolution hereafter declare to be necessary.

SEC. 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue, from its present terminus on Jefferson avenue to Atwater street, and thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot, and the line on Congress street, heretofore operated by the Detroit & Grand Trunk Junction Street Railway Company, shall also be extended from its present terminus through Randolph street to Atwater street; which extensions are hereby declared to be additional routes for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the city railway company, consent and authority is hereby given.

SEC. 3. The ordinance of June 13, 1873, and of June 16, 1875, and all amendments thereto, granting, respectively, to the Detroit and Grand Trunk Junction Street Railway Company, and to the Central Market, Cass Avenue and Third Street Railway Company authority to construct and operate street railways through certain streets of the city of Detroit, are hereby repealed, and the said railways constructed and operated thereunder shall hereafter be subject to and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting to the Detroit City Railway Company certain rights therein set forth.

SEC. 4. On the 1st of July and January in each half year, from the 1st of January, 1880, the Detroit City Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning
361 of each half year, as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts.

On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by the said company shall run, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their roadway or track, and said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobblestone or some similar durable and proper material.

The foregoing special tax and undertaking as to paving shall be in lieu of license and other taxes and charges for paving under existing ordinances.

SEC. 5. The powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance

passed November 24, 1862, and the amendments thereto are hereby extended and limited to thirty years from this date.

SEC. 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the city clerk of Detroit by the Detroit City Railway Company, the Detroit and Grand Trunk Junction Street Railway Company and the Central Market, Cass Avenue and Third Street Railway Company; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

Accepted, read twice by its title, laid on the table and ordered printed in the proceedings.

362 EXHIBIT "A 24½."

Jour. 1879, p. 666.

Resolutions.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereto, and for other purposes.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. The track of the Detroit City Railway Company's line on Gratiot avenue shall be extended and completed and operated from its present terminus to Chene street within sixty days from this date, and from Chene street to the city limits within such period as the common council shall by resolution hereafter declare to be necessary.

SEC. 2. The Detroit City Railway Company shall, on or before June 1, 1880, extend, complete and operate their line on Woodward avenue from its present terminus on Jefferson avenue to Atwater street, and thence through Atwater street to the Detroit, Grand Haven & Milwaukee depot; and the line on Congress street heretofore operated by the Detroit and Grand Trunk Junction Street Railway Company shall also be extended from its present terminus through Randolph street to Atwater street; which extensions are hereby declared to be additional routes for the construction and operation of which, under the provisions of the ordinance of November 24, 1862, granted to the city railway company, consent and authority is hereby given.

SEC. 3. The ordinances of June 13, 1873, and of June 16,
363 1875, and all amendments thereto, granting, respectively, to the Detroit and Grand Trunk Junction Street Railway Company and to the Central Market, Cass Avenue and Third Street

Railway Company authority to construct and operate street railways through certain streets of the city of Detroit, are hereby repealed; and the said railways constructed and operated thereunder shall hereafter be subject and operated under the ordinance approved November 24, 1862, and the amendments thereto, granting to the Detroit City Railway Company certain rights therein set forth.

SEC. 4. On the 1st of July and January in each half year, from the 1st of January, 1880, the Detroit City Railway Company shall pay to the treasurer of the city of Detroit a tax of one per cent., during the period of this ordinance, on the gross receipts of the several lines of street railway operated by said company; and the treasurer of said company shall, on or before the beginning of each half year, as above mentioned, make and deliver to said treasurer a sworn statement of such gross receipts.

On and after the 1st day of January, 1880, whenever any of the streets through which the line of any of the railways operated by the said company shall run, shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which constitutes their roadway or track, and the spaces between the lines of double tracks, and all switches; said company shall at all times keep the same clean and in good order and condition; but said company shall have the right to use on the surface of their roadways either cobblestone or some similar durable and proper material to be approved by the common council.

The foregoing special tax and undertaking as to paving shall
364 be in lieu of license and other taxes and charges for paving under existing ordinances. And it is hereby stipulated and agreed that the cars on all lines subject to this ordinance shall be operated as the public convenience may require and the common council order.

SEC. 5. The powers and privileges conferred and the obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amendments thereto, are hereby extended and limited to thirty years from this date.

And it is further agreed and stipulated that the running of cars on any street, or any fraction thereof, will be discontinued temporarily on such occasions as the common council may, by resolution from time to time designate, to accommodate public processions or any other like public convenience.

SEC. 6. This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the city clerk of Detroit, by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company, and the Central Market, Cass Avenue and Third Street Railway Company, or their successors. And from that date all ordinances or parts of ordinances in conflict with the provisions thereof shall stand repealed, and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force.

SEC. 7. The right to amend or repeal this ordinance in case of its violation by said company or companies is expressly reserved.

Approved November 14, 1879.

GEO. C. LANGDON, *Mayor.*

Attest:

LOUIS DILLMANN, *City Clerk.*

365 EXHIBIT "A 25."

Jour. 1880, p. 659.

Reports of Committees.

An ordinance authorizing the Detroit City Railway Company to construct and operate a street railway in Farrar street.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable half switch on Farrar street, in the city of Detroit, from a point ten feet north of the north line of Bates street, extended to Monroe avenue, and so as to connect with the track of said company on said avenue.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Approved December 11, 1880.

CHARLES EWERS,
Acting Mayor.

Attest:

LOUIS DILLMANN, *City Clerk.*

366 EXHIBIT "A 26."

Jour. 1882, p. 372.

Resolutions.

An ordinance, to authorize the Detroit City Railway Company to construct and operate a double track on Griswold street, between State and Larned streets.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary

to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Griswold street, from State street to Larned street, and so as to connect at said streets with the present main track on said Griswold street: Provided, that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Approved July 8, 1882.

WM. G. THOMPSON, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

367 EXHIBIT "A 27."

Jour. 1884, p. 126.

Resolutions.

An ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Woodbridge street from the present terminus of its double track near Second street westward to the east line of Third street, and so as to connect with the main track on said street (in the form of a Y), and to remove the present track across Third street and the turn-table at the terminus thereof and relay the same across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street thirty feet west of the west line of Third street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled, "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Woodbridge street from the present terminus of its double track near Second street, westward to the east line of Third street, and so as to connect with the main track on said street in the form of a Y, and to remove the present track across Third street, and the turn-table at the terminus thereof, and relay the same
368 across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street thirty feet west of the west line of Third street.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Approved March 29, 1884.

S. B. GRUMMOND, *Mayor.*

Attest:
ALEX. A. SAENGER, *City Clerk.*

EXHIBIT "A 28."

Jour. 1884, p. 484.

Resolutions.

An ordinance to authorize the Detroit City Railway Company to construct and operate a double track through the Campus Martius of the city of Detroit.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50, of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate an additional track through the Campus Martius of said city, extending from the present termination of the double track of said com-
369 pany, near the northerly line of said Campus Martius, southerly to the north line of Fort street, extended so as to form one continuous double track for said company across the Campus Martius: Provided, that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Approved July 21, 1884.

S. B. GRUMMOND, *Mayor.*

Attest:
ALEX. A. SAENGER, *City Clerk.*

EXHIBIT "29 A."

Journal 1884, p. 757.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, fixing and determining a new street railway route, and authorizing the Detroit city railway to establish, construct and operate a street railway thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for
370 other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinances, viz: Commencing at a point on Ferry street, adjacent to the Detroit & Milwaukee junction, running thence along Ferry street to Russell street, thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue and thence over the present track of the Detroit city railway on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

SEC. 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in section 1 of this ordinance on or before the first day of December, A. D. 1885, and said grantees shall on or before the first day of February deposit with the controller of said city the sum of five thousand dollars in money or United States stocks, or in treasury notes, which said deposit shall be forfeited to the city of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance.

Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the controller shall refund to said grantees the amount so deposited as forfeit with him.

371 Provided that should said grantees be prevented from completing said railway by December 1, 1885, not due to any

fault or action of said grantees, then the said grantees may be granted an extension of time within which to so complete said railway.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the city of Detroit in the sum of $50,000 to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

Approved January 5, 1885.

S. B. GRUMMOND, *Mayor.*

Attest:
ALEX. A. SAENGER, *City Clerk.*

EXHIBIT "A 30."

Jour. '85, p. 382.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto,
372 fixing and determining a new street railway route, and authorizing the Detroit city railway to establish, construct and operate a street railway thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 50, of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879.

The Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables, in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use and to operate thereon railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue; thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the

Congress and Baker Street railway on Seventh street, southerly to Congress street, easterly along Congress street to Randolph street and southerly through Randolph street to the terminus of said road at Atwater street.

SEC. 2. The said Detroit city railway shall complete that portion of said route from the intersection of Howard and Seventh streets to Warren avenue, and have the same in full operation within one year from the date of the passage of this ordinance.

373 SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a good and sufficient bond to the city of Detroit in the sum of $50,000, to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Approved July 31, 1885.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

EXHIBIT "A 31."

Jour. 1885, p. 534.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the extension of railway tracks in Russell street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions of and requirements of said chapter 98 of the Revised Ordinances of 1884, of an

374 ordinance entitled, "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and of supplements and amendments thereto, the Detroit city railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Russell street from Ferry street, connecting with the present track of said railway northerly through Russell street to the south line of the Lake Shore & Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SEC. 2. This ordinance shall take effect when the said railway

company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Approved October 9, 1885.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

EXHIBIT "A 32."

Jour. 1886, p. 455.

An ordinance, supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the laying of a double track on Michigan avenue from Thirteenth-and-a-half street to Twenty-fifth street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue,
375 from Thirteenth-and-a-half street to Twenty-fifth street, in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof, and a written agreement to pave said street in accordance with the terms of its proposition as reported upon to the board of aldermen by a special committee, August 10, 1886.

Approved September 1, 1886.

M. H. CHAMBERLAIN, *Mayor.*

Attest:

WM. T. DUST, *City Clerk.*

EXHIBIT "A 33."

Jour. 1887, p. 516.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing and requiring the Detroit city railway to extend its street railway line from the present terminus on Third street or avenue along said Third street or avenue to its intersection with Holden road; thence in a westerly direction along the Holden road to the crossing of the Detroit & Bay City railroad.

It is hereby ordained by the people of the city of Detroit:

376 SECTION 1. Subject to all the requirements and provisions of chapter 50 of the Revised Ordinances of 1878 and of the

amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, and ordinances supplementary thereto, the Detroit city railway is hereby authorized, permitted and required, to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues in the said city of Detroit, and the same keep, maintain and use, and to operate thereon street railway cars, to wit: From the present terminus of the line or track of said Detroit city railway on Third street or avenue in said city along said Third street or avenue to the Holden road; thence in a westerly direction along the center of said Holden road to the point where the track of the Detroit & Bay City Railroad Company crosses said Holden road.

SEC. 2. That portion of said route from the present terminus of the track on Third street or avenue to the Holden road is to be constructed and laid contemporaneously with the paving of said Third street or avenue to the Holden road; and that portion of said route on the Holden road to be constructed and laid before the first day of January, A. D. 1888, and the whole of said extension to be in operation by January 1, 1888, in connection with and as a part of the line of said Detroit city railway now in operation on said Third street or avenue.

SEC. 3. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient
377 bond to the city of Detroit in the sum of twenty-five thousand dollars, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days after the approval of the ordinance.

Approved July 26, 1887.

M. H. CHAMBERLAIN, *Mayor.*

Attest:

WM. T. DUST, *City Clerk.*

EXHIBIT "A 34."

Jour. 1888, p. 782.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24th, 1862, and supplementary to amendments and supplements thereto, authorizing the extension of railway tracks in Trumbull avenue.

It is hereby ordained by the people of the city of Detroit:

SECTION I. Subject to all the provisions and requirements of chapter 98 of an ordinance entitled "An ordinance to permit certain

persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and of supplements and amendments thereto, the Detroit city railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Trumbull avenue from the southerly line of Warren avenue, connecting with the present track of said railway, northerly through Trumbull avenue to the southerly line of the Lake
378 Shore & Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SECTION 2. The said Detroit city railway shall have said track completed and the same in full operation within 60 days from the date of the passage of this ordinance.

SECTION 3. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and the public in relation to said railway.

SECTION 4. This ordinance will take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute and deliver a good and sufficient bond to the city of Detroit in the sum of $10,000, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Approved October 27, 1888.

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. C. KRONBERG, *City Clerk.*

EXHIBIT "A 35."

Jour. 1889, p. 31.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24,
379 1862," and supplementary to amendments and supplements thereto, and supplementary to an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and to the amendments thereto, and for other purposes," approved November 14, 1879, and all amendments and supplements thereto.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the Year 1884, and of amendments thereof, and supplements thereto, and of an ordinance entitled "An ordinance supplementary to an ordinance, entitled An ordinance to permit certain persons to estab-

lish and locate street railways in the city of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a street railway, with convenient tracks for turnouts, side tracks, curves and switches in and through the following streets and avenues in the city of Detroit, and the same to keep, maintain, and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884 and in the said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street east turns onto Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street; thence northerly along Brush street to its intersection with Fort street east; thence
380 easterly along said Fort street east to Mt. Elliott avenue; thence along said Mt. Elliott avenue to the Jefferson Avenue double track; thence along said Jefferson Avenue double track to the easterly limits of the city.

Also, to extend its track on Cass avenue from where it now turns onto Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the city of Detroit, so that a doule track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street railway track in, along and through Mack street, from its conjunction with Gratiot avenue, in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

381 Also, permission is hereby granted to the said Detroit city railway, if it shall so desire to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridges and approaches thereto, to

Belle Isle park, to said park, with all the privileges and rights which may be granted to any other street railway.

SEC. 2. The track hereby authorized on Congress, Brush and Fort street east shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel, and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the common council.

SEC. 3. Permission and authority is hereby given to the said Detroit city railway to run its cars at a rate of speed not exceeding ten miles an hour, and is hereby required to run thereon at an average speed of not less than six miles per hour, and whenever it shall deem it advisable to substitute in lieu of animal power such
382 system of electric or other motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said city of Detroit upon any or all of its said lines, now in use and operated, or hereafter to be in use and operated by said company, said change to be made under the supervision of the board of public works.

SEC. 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit city railway, but the permission and authority hereby given shall be inoperative and void unless the said Detroit city railway shall file a written acceptance thereof within thirty days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto to wit:

A. It shall carry passengers from its Cass Avenue and Third Street, Trumbull Avenue, Michigan Avenue and Congress and Baker Street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau. Atwater and Chene streets, shall be entitled to be transferred at Fort street, to and

conveyed by cars running on the proposed line on Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot and Michigan Avenue lines in one continuous trip. A passenger paying a
383 single fare of five cents on the line hereby authorized to be constructed on Fort street east, shall be transferred at Chene street to said Chene Street line, and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to be transferred at Chene street to said Chene Street line and to be carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride over said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction, over the Fort Street East, Chene Street and Gratiot Avenue lines for a single fare of five cents for one continuous trip.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer of passengers, or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company, it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon, over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage, provided for in paragraphs "A," "B" and "C" of this section.

E. It shall within six months take up and remove its turn-tables, now at the intersection of its Jefferson and Woodward Ave-
384 nue lines, and shall run the cars on the said Woodward Avenue line to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

SEC. 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period fixed by the ordinance, approved November 14, 1879, that is to say, until November 14, 1909.

SEC. 6. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 7. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same, and shall execute a bond to the city of

Detroit in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bonds shall be filed within thirty days of the approval of this ordinance by the mayor.

Approved:

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. G. KRONBERG, *City Clerk.*

385 EXHIBIT "A 36."

Jour. 1889, p. 148.

Ordinances.

To the honorable the common council.

GENTLEMEN: Your committee on ordinances to whom was referred the matter of preparing an ordinance for the extension of the Michigan Avenue street railway tracks, respectfully report that they have prepared the ordinance and submit the same herewith.

Respectfully,

D. C. KELLOGG.
B. GUINEY.
FRANK N. REVES.

An ordinance supplementary to an ordinance entitled "An ordinance supplementary to an ordinance," entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereof, approved November 14, 1879, and all amendments and ordinances supplementary thereto.

It is hereby *ordered* by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit, the year 1884, and of an ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and the amendments thereof approved November 14, 1879, and all ordinances supplementary thereof and in amendment thereto, the Detroit city railway is hereby authorized and permitted to
386 lay, construct, use and operate a double track on and through Michigan avenue in said city of Detroit, from the present terminus of its double track on Michigan avenue, westerly to the city limits.

SEC. 2. Said track shall be laid contemporaneously with the pavement of said Michigan avenue, and only so far as said street is, or may hereafter be paved, and the expense of paving the portions of said street between the outer rails of said track shall be paid by said company.

Read twice by title, ordered printed and laid on the table.

EXHIBIT "A 37."

Third Reading of Ordinances.

Jour. 1889, p. 172.

On motion of Ald. Kellogg an ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved Nov. 24, 1862, and the amendments thereof, approved November 14, 1879, and all amendments thereto relative to the extension of railway track on Michigan avenue, laid over March 19, was taken up.

The ordinance was then placed on the order of third reading.

Ald. Hayes moved to lay the whole matter on the table.

Lost.

The ordinance was then adopted as follows:

Yeas—Ald. Amos, Bleser, Boettcher, Burt, Cronenwett, Gilmore, Griggs, Guiney, Kellogg, Martz, McGuire, Reves, Reichenbach, Schmidt, Tierney, Trombly, Vernor, Wotzke, and the president—19.

Nays—Ald. Grant, Hayes, Holihan, Karrer, Kessler, Lauder, Murphy, O'Regan, Reynolds, Smith and Uthes—11.

The ordinance was then confirmed by its title.

387 EXHIBIT "A 38."

Journ. 1889, p. 832.

An ordinance authorizing the Detroit City Railway Company to extend their tracks on Russell street from Ferry avenue to Lake Shore & Michigan Southern Railroad crossing.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to the provisions and requirements of chapter 98 of the Revised Ordinances of 1884, and of all ordinances supplementary and amendatory thereof, and of the ordinance approved January 5, 1885, authorizing the Detroit City Railway Company to construct and operate a street railway on Brush, Russell and other designated streets in said city, permission and authority are hereby given to said Detroit City Railway Company to extend its single track, with suitable switches, on Russell street from Ferry avenue to the city limits, and to operate and use the same as a part of the Brush and Russell Street railway line.

SEC. 2. The laying of said track shall be completed within thirty days from the passage of this ordinance.

SEC. 3. This ordinance shall take immediate effect.

Approved November 19, 1889.

JOHN PRIDGEON, *Mayor.*

A. G. KRONBERG, *City Clerk.*

388

EXHIBIT "A 39."

Jour. 1891, p. 504.

Reports of Committees.

An ordinance providing for the introduction of rapid transit on the lines of the street railway owned and operated by the Detroit Street Railway Company, and to provide for certain extension and changes of existing lines, and of the term for which the same may be operated by said company.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. The Detroit Street Railway Company is hereby authorized to substitute, in lieu of animal power, cable, electric or other mechanical power, including steam, on all of the lines of the street railway owned or operated by it, or which may hereafter be owned or operated by it; provided, however, that no motor may be used which differs materially in general outside appearance from street cars, and which shall make greater noise than results from the operation of street cars; provided, further, that when the change of motive power on Woodward avenue shall be made, cable power shall be used, unless otherwise ordered by the common council before contracts are entered into by said company for the cable construction. Provided, that said company shall give ten days' notice to the common council of its intention to enter into such contract.

SEC. 2. That for the purpose of putting in operation the electric system of motive power, the said company is hereby authorized and empowered to erect within the limits of the streets the necessary poles of the most approved construction, and to suspend
389 therefrom such cross and longitudinal wires as may be necessary to apply said electricity in propelling the cars, and such guard-wires as may be necessary to protect them from other wires suspended above.

SEC. 3. The introduction of cable as the motive power on Woodward avenue shall proceed under the following terms and conditions, to wit:

The company shall break ground for the construction of its line track not later than the first day of May, 1892, and shall have the same completed on or before the first day of October of the same year, provided the same is not prevented by legal proceedings, strikes, riots or other causes beyond its control.

2. The company shall give the city engineer two weeks' notice of its intention to commence such work, and upon receiving such notice, and as often thereafter as requested by the company, the city engineer shall cause proper grade and center stakes to be set in the street. The tracks shall be laid so as to conform accurately to such stakes in grade and line, and shall be four feet and eight and one-half inches apart, and said grade and line once established shall not be changed by the company except under the direction of the common council and at the expense of the city.

3. During the construction and after the completion of the track neither the city nor any private individual or corporation shall disturb the same to lay or repair sewers, gas or water mains, electric conduits, or for any other purpose, but where it is necessary to do any work under the tracks they shall be tunneled and the excavation and the refilling of the same shall be done under the supervision of the railway company, or by it, at the expense of the party desiring the same at the option of the company.

390 4. For the purpose of introducing cable transit, the company is authorized to construct, maintain and use in the street all such conduits, pulley vaults, terminal sheave vaults, blind conduits from line to power-house, and other cable-road construction as may be necessary; and the company shall have the right to lower all such pipes, electric conduits, and other obstructions to the construction of its tracks as may be found in the way of construction at its own expense and under the supervision of the owners of such obstruction and also to make necessary and proper drainage connections between said cable conduits and substructures and the public sewers.

SEC. 4. The said company shall make the change of motive power hereby authorized on its line on Jefferson avenue within six months from the passage of this ordinance, and on the other lines operated by it, except Woodward avenue, within one year from the passage of this ordinance, provided, however, that it is not prevented from so doing by legal proceedings, strikes, riots, or other causes beyond its control.

SEC. 5. The said company is hereby authorized to lay as additional track on Trumbull avenue from its intersection with Michigan avenue northerly to the Lake Shore & Michigan Southern crossing and the same to use and operate as a double-track line; also to use and operate a single street railway track in, along and through Twenty-fourth street to Dix avenue, thence along Dix avenue to the Michigan Central Railroad crossing; also on Jefferson avenue northerly from its intersection with Dix avenue to the Michigan Central Railroad crossing, and said line to be operated in connection with the Congress and Baker Street line and to be a part thereof.

Also to extend its double street railway track in, along and through Griswold street from where it now turns into Larned

391 street southerly to Jefferson avenue and the same to connect with its present Jefferson Avenue track by suitable curves and switches.

Also to extend its single-track railway on Larned street from where it turns into Griswold street easterly, in, along and through said Larned street to Brush street, and northerly on said Brush street to Congress street, and the same to connect with the Congress Street track by suitable curves and switches for the purpose of extending and completing the present loop line to the Third Street depots.

Also, to extend its single track on Baker street from where it now turns into Seventh street easterly in, along and through said Baker

street to Sixth street to Michigan avenue, and to connect with its present Michigan Avenue tracks by suitable curves.

Also, to extend its double tracks on Michigan, Woodward and Gratiot avenues and its single track on Dix avenue to the city limits as the same now exists, or as said limits may be from time to time extended.

Also, to lay, construct, use and operate in connection with any and all of said tracks suitable switches, curves, turnouts and turntables.

Also, when the Grand River Railway Company has removed one of its tracks from Woodward avenue north of Fort street, the three tracks then remaining on the street shall be used in common by both companies and the same may be extended south from Jefferson avenue to Atwater street, connecting there with the terminal tracks south of Atwater street.

The charges for construction and maintenance of these tracks and the paving between the outside rails thereof shall be borne by the companies in proportions to be agreed upon between them.

The easterly track shall be used by cars going north and the westerly track by cars going south. The center tracks shall
392 be used for switching so that the through cars on the other tracks shall not be unnecessarily delayed.

SEC. 6. In order that an average speed of ten miles per hour may be maintained on its lines, the said company is hereby authorized and empowered to run its cars at a speed not to exceed twenty miles per hour.

SEC. 7. The Detroit Street Railway Co. is hereby authorized and empowered to own, use and operate all of the lines of street railway now owned and operated by it, and all lines and extensions of lines and tracks provided for by this ordinance for a period of 30 years from the date of the passage of this ordinance.

SEC. 8. This ordinance shall take effect when the said Detroit Street Railway Company shall file with the city clerk an acceptance thereof in writing, and shall file therewith its bond in the penal sum of fifty thousand dollars, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bond shall be filed within thirty days of the date of the passage of this ordinance.

Read twice by title, ordered printed and laid on the table.

An ordinance to amend section 5 of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24th, 1862, and the amendments thereto, and for other purposes, approved November 14th, 1879," and to add a new section thereto to stand as section 8.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That section 5 of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit

certain persons to establish and locate street railways in the city of Detroit,' approved November 24th, 1862, and the amend-
393 ments thereto, and for other purposes, approved November 14, 1879," be amended so as to read as follows:

SEC. 5. The power and privileges conferred and the obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, are hereby extended and limited to the period of twelve years from and after the fourteenth day of November, 1909. And the said Detroit city railway, its successors and assigns, are hereby authorized and empowered to own, construct, use and operate its and their lines of street railway from the date of the passage of this ordinance to November 14th, 1921.

It is further agreed and stipulated that the running of cars on any street or any fraction thereof will be discontinued temporarily as the common council may by resolution from time to time designate, to accommodate public processions or any other like public convenience.

SEC. 2. That a new section be added thereto to stand as section 8, to read as follows:

SEC. 8. The powers and privileges conferred and the obligations imposed on the Detroit city railway by the provision of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and all amendments and supplements thereto, and by the provisions of the several ordinances contained in chapter 109 of the Revised Ordinances of the City of Detroit for the Year 1890, and by the terms and provisions of this ordinance, are hereby conferred and imposed on the Detroit City Railway Company.

SEC. 3. This ordinance shall take effect when the Detroit City Railway Company shall file with the city clerk an acceptance thereof in writing, provided such written acceptance shall be filed within thirty days after the date of the passage of this ordinance.

394 Read twice by title, ordered printed and laid on the table.

Third Reading of Ordinances.

Journal 1891, p. 150.

On motion of Ald. Scott:

An ordinance providing for the introduction of rapid transit on the lines of the street railway owned and operated by the Detroit Street Railway Company, and to provide for certain extensions and changes of existing lines and of the term for which the same may be operated by the said company, laid on the table June 23, was taken up.

The ordinance was placed on the order of third reading.

Ald. Reves offered the following substitute for section five (5), viz:

SEC. 5. The said company is hereby authorized to lay an additional track on Trumbull avenue from its intersection with Michigan

avenue, northerly to the Lake Shore & Michigan Southern Railroad crossing, and the same to use and operate as a double-track line; also to use and operate a double street railway track in, along and through Twenty-fourth street to Dix avenue, thence along Dix avenue to the Michigan Central Railroad crossing; also on Junction avenue northerly from its intersection with Dix avenue to the Michigan Central Railroad crossing, and said line to be operated in connection with the Congress and Baker Streets line, and to be a part thereof.

Also to extend its double street railway track in, along and through Griswold street from where it now turns into Larned street, southerly to Jefferson avenue, and the same to connect with its present Jefferson Avenue track by suitable curves and switches.

395 Also to extend its single-track railway on Larned street from where it turns in Griswold street, easterly in, along and through said Larned street to Brush street, and northerly on said Brush street to Congress street, and the same to connect with the Congress Street track by suitable curves and switches for the purpose of extending and completing the present loop line to the Third Street depots.

Also to lay an additional track along and through Baker street from Twenty-fourth street to Sixth street; thence along Sixth street to Michigan avenue.

Also to extend its present track along Sixth street to Michigan avenue, and said tracks to be connected with suitable curves with the tracks on Michigan avenue, and to be operated as a double-track line.

Also to extend its double tracks on Michigan, Woodward and Gratiot avenues, and its single track on Dix avenue to the city limits as the same now exists, or as said limits may be from time to time extended.

Also to lay, construct, use and operate in connection with any and all of said tracks, suitable switches, curves, turnouts and turntables.

Also, when the Grand River Railroad Company has removed one of its tracks from Woodward avenue, north of Fort street, the three tracks then remaining on the streets shall be used in common by both companies, and the same may be extended south from Jefferson avenue to Atwater street, connecting there with the terminal tracks south of Atwater street.

The charges for construction and maintenance of these tracks and the paving between the outside rails thereof shall be borne by the companies in proportions to be agreed upon between them.

The easterly track shall be used by cars going north and the westerly tracks by cars going south. The center track shall

396 be used for switching, so that the through cars on the other tracks shall not be unnecessarily delayed.

Ald. Vernor offered the following as a further amendment to the substitute of Ald. Reves, as follows:

Provided, that it is further hereby agreed upon that the Detroit

City Railway Company shall occupy but two tracks upon any one street in the city of Detroit, and wherever more than two tracks exist, they shall at their own expense remove the extra tracks within ninety days from the date of the adoption of this ordinance.

Lost.

Ald. Reves moved to strike out the words Woodward avenue in section five (5).

Carried.

Ald. Thompson moved to strike out the words double track on Trumbull avenue.

Lost.

The question then recurring upon the substitute of Ald. Reves was then adopted.

Ald. Vernor moved to amend section "seven (7)" as follows:

Provided, that it is further hereby agreed upon that the Detroit City Railway Company shall issue free change-off tickets on each of their routes, which ticket shall entitle the holder to a continuance of the trip to any point in the city reached by the lines of the company.

Ald. McGuire offered the amendment to the amendment of Ald. Vernor.

SEC. 8. The said Detroit City Railway Company shall sell and place on sale with their conductors workingmen's tickets, at the rate of eight tickets for twenty-five cents, each ticket good for one continuous trip over any of the lines of said company, from one terminus to the opposite terminus thereof, between the hours of five and eight o'clock in the morning and between four and seven o'clock in the evening of each day, and said company shall further issue to each passenger upon any of the lines operated by them within the city, including a line operated under the style of the Detroit City Railway Company, a transfer, free of charge, to and upon any intersecting or other line or lines operated by said Detroit Street Railway Company.

397

SEC. 9. The right to repeal, alter or amend this or any other ordinance heretofore passed granting rights, privileges or franchises to the Detroit Street Railway Company, is hereby reserved, and where not before reserved by the common council, is hereby granted and assented to by said Detroit Street Railway Company and Grand River Railway Company, as part consideration for the granting of the above.

Carried.

The amendment of Ald. Vernor and the amendment of Ald. McGuire was then adopted.

Ald. Vernor offered the following amendment:

Provided, that it is further hereby agreed upon that the Detroit City Railway Company shall exchange transfer tickets with any other company by whom they may be requested so to do at the intersecting points of the lines of both companies said transfer tickets to entitle the holder to a continuance of the trip to any point in the city reached by the line of the company receiving the same.

Carried.

Ald. Vernor offered the following amendment:

Provided, that it is hereby further agreed upon that the Detroit City Railway Company shall, for a consideration to be agreed upon, grant permission to any other company that may desire to run their cars over the tracks of this company for a distance not to exceed three-quarters of a mile, for the purpose of obtaining terminal facilities, and for the purpose of ascertaining proper consideration for such privilege, there shall be three persons appointed,
398 whose decision shall be final, one of these persons to be appointed by each interested company, and the third, who shall act as chairman, to be selected by the two so appointed.

Ald. Reves moved to lay the whole matter on the table, and when the council adjourns it adjourned until July 1 at 12 o'clock m. for the purpose of considering the ordinances.

Reconsideration.

P. 541.

Ald. Reves moved to take up the Detroit City Street Railway ordinance.

Carried.

Ald. Vernor offered the following amendment:

Provided, that it is hereby further agreed upon, that the Detroit City Railway Company shall, for a consideration to be agreed upon, grant permission to any other company that may desire to run their cars over the tracks of the Detroit City Railway Company, for a distance of not to exceed three-quarters of a mile, for the purpose of obtaining terminal facilities; and for the purpose of ascertaining the proper consideration to be paid for such privilege, there shall be three persons appointed, whose decision shall be final, one of these persons to be appointed by each interested company, and the third, who shall act as chairman, shall be selected by the two so appointed.

Lost.

The following amendment was offered by Ald. Vernor:

Provided, that it is further agreed upon that the Detroit City Railway Company shall, upon order of the common council of the city of Detroit cause a more frequent service to be given upon the lines of the company at any time the accommodation of the
399 passengers is found regularly to be inadequate to comfortably carry the passengers.

Carried.

Ald. Buhrer offered the following amendment:

SEC. 9. Provided, that the said Detroit City Railway Company shall pay to the city of Detroit a tax of two and one-half ($2\frac{1}{2}$) per cent. upon its gross receipts, to be paid on the 1st day of July in each year; and in addition thereto shall pay a tax upon the assessed valuation of all its real estate, the buildings thereon, and all its personal property situate within the city of Detroit.

Lost.

Ald. Buhrer offered the following amendment:

SEC. 9. Provided, that the Detroit City Railway Company, in lieu of this valuable extension of franchise and as a bonus therefor, shall pay into the treasury of the city of Detroit the sum of one hundred thousand ($100,000) dollars within one year from date of the adoption of this ordinance.

Lost.

Ald. Reves moved to strike out sections 8 and 9.

Carried.

Ald. Driggs offered the following amendment:

Whenever the storage battery shall have been proven to be a commercial success for street-car uses, the company, if operating its lines by the overhead-wire electric system, shall remove all poles and wires and use the storage battery or one of the other methods provided for by this ordinance.

Adopted.

Ald. Vernor offered the following amendment:

SEC. 9. That said railway company shall sell workingmen's tickets from 5.30 to 8.30 a. m., and in the evening from 5 to 8.30
400 p. m., at the rate of eight tickets for 25 cents, said tickets to be sold by the conductors and to be good for one fare during the above hours.

Lost.

The following section was then adopted as section 8:

SEC. 8. This ordinance shall take effect when the said Detroit Street Railway Company shall file with the city clerk an acceptance thereof in writing, and shall file therewith its bond in the penal sum of fifty thousand dollars, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bond shall be filed within thirty days of the date of the passage of this ordinance.

Ald. McGuire offered the following amendment:

"The rights, privileges and powers hereby conferred upon the Detroit Street Railway Company are granted upon the condition and with the provision that said company shall not during the term it shall exercise such powers and avail itself of the rights and privileges hereby conferred, exact of its employés more than ten hours' labor for a day's work or service, nor shall it employ or keep in its employ any person or persons who are not resident electors of the city of Detroit, and said company shall in the event of its violation of either of these provisions or conditions, forfeit right, power and privileges conferred upon it hereby."

Ald. Reves offered the following as a substitute:

SEC. 7. The rights, privileges and power hereby conferred upon the Detroit Street Railway Company are granted upon the condition and with the provision that said company shall not, during the time it shall exercise such powers and avail itself of the rights and privileges hereby conferred, exact of its employés more than ten hours' labor for a day's work or service, nor shall it knowingly employ or keep in its employ any person or persons who are
401 not resident electors of the State of Michigan, or who would be electors on arriving at twenty-one years of age, and for

any violation of the foregoing conditions said company shall forfeit to the city of Detroit the sum of one hundred dollars, which may be recovered in an action by said city in any court of competent jurisdiction.

Provided, however, that the above restriction shall apply only to those actively engaged in operating the cars and the hostlers, and, provided further, that said company is able, by reasonable effort, to employ sufficient number of resident electors to operate its lines.

Adopted.

Ald. Lennane moved to strike out double track on Baker street and Trumbull avenue.

Lost.

That said company give tickets at the rate of eight for twenty-five cents, to be good for a continuous trip on all lines between hours of 5 and 7 a. m. and 5 and 7 p. m. on each and every day except Sunday.

Carried.

Ald. Reves moved to strike out the amendment of Ald. Thompson.

Carried.

Ald. McGuire offered the following amendment:

Said company shall further issue to each passenger upon any of the lines operated by them within the city a transfer, free of charge, to and upon any intersecting or other line or lines operated by said Detroit Street Railway Company.

Lost.

The ordinance, as amended, was then adopted by the following vote:

Yeas—Ald. Amos, Barnes, Brennan, Fischer, Grant, Griggs, Langley, Meier, McGuire, McIntyre, O'Regan, Reves, Reschke, Reynolds, Richert, Roth, Scher, Scott, Schmidt, Uthes, Watson and the president—22.

402 Nays—Ald. Buhrer, Lennane, Lowry, Thompson, Vernor, Webster—6.

The ordinance was then confirmed by its title.

Ald. Lowry and Ald. Webster were excused from further attendance on this session.

On motion of Ald. Reves:

An ordinance to amend section 5 of an ordinance entitled An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24th, 1862, and the amendments thereto, and for other purposes, approved November 14th, 1879, and to add a new section thereto to stand as section eight, laid on the table June 23, was taken up.

The ordinance was placed on the order of third reading.

Ald. Buhrer moved to strike out the words "twelve years" in section two (2).

Lost.

Ald. Reves moved to strike out the word "city" and insert the word "street" in last line of sec. 8 and second line of sec. 3.

Carried.

The ordinance, as amended, was then adopted as follows:

Yeas: Ald. Amos, Barnes, Brennan, Fisher, Grant, Griggs, Langley, Meier, McGuire, McIntyre, O'Regan, Reves, Reschke, Reynolds, Richert, Roth, Scher, Scott, Schmidt, Uthes, Watson and the president—22.

Nays: Ald. Buhrer, Lennane, Thompson, Vernor—4.

The ordinance was then confirmed by its title.

403 EXHIBIT "A 40."

Jour. 1891, p. 553.

Communications from City Officers.

From his honor the mayor.

To the honorable the common council.

GENTLEMEN: I hereby return, without my approval, the ordinance adopted by your honorable body on the first day of July, 1891, entitled "An ordinance providing for the introduction of rapid transit on the lines of the street railway owned and operated by the Detroit Street Railway Company, and to provide for certain extensions and changes of existing lines, and of the term for which the same may be operated by said company."

My reasons for non-approval of the ordinance are as follows:

Private ownership of natural monopolies in cities is necessarily the cause of an immense financial loss to the citizens. It is a bad financial arrangement. This can be proved and is a sufficient reason for a change if we had no other. It is generally believed that this is the chief source of corruption in city government. I do not assert that this could be proved in respect to our city; it is only urged as the result of general experience. But that it is a foolish financial arrangement can be proved beyond question by European and American experience on a large scale. Denunciation of particular persons should be tempered by the consideration that the system is largely to blame. Still, the people cannot see why valuable public property should be given away unless through private instead of public motive.

Section 7 of the ordinance above alluded to confers upon
404 the Detroit Street Railway Company a franchise to "own, use and operate all of the lines of street railway now owned and operated by it (the Detroit city railway) and all lines and extensions of lines and tracks provided for by this ordinance, for the period of thirty years from the date of the passage of this ordinance."

By the ordinance subsequently passed at the same meeting extending the franchise of the Detroit City Railway Company, and conferring new franchises and powers upon it, that company is

authorized to take such franchise and powers for its assigns. It is further provided in the last-mentioned ordinance that the powers and franchises — on the Detroit City Railway Company by all the precedent ordinances back to and including November 24, 1862, shall be conferred upon the Detroit Street Railway Company.

It is thus evident that the effect of the ordinance is: First, to enable the old city railway company to assign all its franchises and property to the new corporation; and, second, to confer upon the new corporation a franchise embracing the right to operate a street railway upon all thoroughfares of the city for the period of 30 years, without compensation to the city.

The city's valuable franchises are property, as much so as the money of the city raised by taxation in the city treasury, and in my opinion no property of the city should be given away either as a reward of merit or as a subsidy.

The pretense for this donation urged by the Detroit City Railway Company, otherwise known and now appearing as the Detroit Street Railway Company, is that it will give Detroit rapid transit, but we cannot afford to buy rapid transit at the immense cost of these franchises. To grant what is now asked by the city railway company is to bind this city hand and foot for 30 years; that is to say, for an entire generation. The fact that sagacious business men stand ready to pay millions of dollars for such franchises show what they are worth to the city.

405

If the Detroit City Railway Company, or the Detroit Street Railway Company, does not choose to give us rapid transit, the right to furnish the new and improved facilities for travel over the lines operated by that or those companies could be sold for from three to four millions of dollars.

The question remaining is this: Whether because the franchise of the old city railway company has not expired, it can refuse to give the new methods of carriage demanded by Detroit before the expiration of the old term, and in that way compel us to lose the immense value of the franchise as the price for giving such methods.

In the first place, it is extremely doubtful, as I am advised, whether the franchise of the city railway company can last longer than thirty years from November, 1862; but if it be true that the old company is vested with an unexpired term, and refuses to give us what the people want during that unexpired term, except upon unreasonable, not to say outrageous, conditions, then the right of the city railway company for its unexpired term, which is undoubtedly the city railway's property, should be taken and condemned under the power of eminent domain.

Their property in this franchise for the unexpired term is no more sacred and no more above the law and above the power of eminent domain than the property of private citizens which is taken every day for public purposes. The value of that unexpired term of the city railway company, under the constitution of this State, would be appraised by twelve citizens and the freeholders of this community, and it may be remarked in passing that the returns of

the railway company to the city treasurer's office of its gross
406 receipts for the purpose of taxation would be evidence of the value of its franchise which the city railway company could not successfully contradict.

There is no good reason why Detroit should not follow the example of other cities and relieve the burden of the people incurred by constantly increasing rates of taxation by selling such valuable franchises for the benefit of the city treasury. Either that or to leave the money of the people in their own pockets by reducing the fare to the minimum amount.

Gentlemen of the council, I cannot believe that when these ordinances were passed by you that you knew that you were granting a new franchise of thirty years to a new corporation created but six months ago, and not only this, but that you are consenting to a transfer to such new corporation, in addition to all of the new rights granted to it, all the exceptional and remarkably valuable franchises already vested in the old city railway company.

Very respectfully, H. S. PINGREE, *Mayor.*

Accepted; and leave being granted the following resolution was offered:

By Ald. Griggs:

Resolved, That a committee of five be appointed to whom shall be referred the message of the mayor and the ordinance now before us, with instructions to investigate to the fullest extent their time and opportunities will permit of, the entire street railway question, both as to existing and proposed corporations, and to act in conjunction with his honor the mayor and the citizens' committee; and be it further

Resolved, That the committee on streets and ordinances
407 be and they are hereby instructed to defer further action in the matter of street railway franchises until such time as the committee provided for herein shall have reported to this body.

Adopted as follows:

Yeas—Ald. Amos, Fisher, Grant, Griggs, Langley, Meier, McGuire, O'Regan, Reves, Reschke, Reynolds, Richert, Schmidt, Uthes, Watson and the president—16.

Nays—Ald. Barnes, Buhrer, Coots, Gilmore, Hoffman, Lennane, Lowry, Roth, Scher, Scott, Thompson, Webster—12.

The council then adjourned.

A. G. KRONBERG, *City Clerk.*

ACCEPTANCE No. 1.

To the city of Detroit:

The Detroit City Railway Company hereby accepts the terms of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24th, 1862, and the amendments thereto and for other purposes,"

approved November 14th, 1879, and files this acceptance in accordance with the provisions of section 6 of said supplementary ordinance.

Detroit, November 15th, 1879.

THE DETROIT CITY RAILWAY COMPANY,
By SIDNEY D. MILLER, *President.*

F. E. DRIGGS, *Secretary.*

408 ACCEPTANCE No. 2.

To the city of Detroit:

The Cass Avenue Detroit Railway Company, the successor of the Central Market, Cass Avenue and Third Street Railway Company, hereby accepts the terms of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24th, 1862, and the amendments thereto and for other purposes," approved November 15th, 1879, and files this acceptance in accordance with the provisions of section 6 of said supplementary ordinance.

Detroit, November 15, 1879.

CASS AVENUE STREET RAILWAY COMPANY,
By JAS. McMILLAN, *President.*

F. E. DRIGGS, *Secretary.*

409 ACCEPTANCE No. 3.

To the city of Detroit:

The Congress and Baker Street Railway Company, the successor to the Detroit & Grand Trunk Junction Street Railway Company, hereby accepts the terms of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24, 1862, and the amendments thereto and for other purposes," approved November 14th, 1879, and files this acceptance in accordance with the provisions of section 6 of said supplementary ordinance.

Detroit, November 15th, 1879.

THE CONGRESS & BAKER STREET RAILWAY COMPANIES,
By JAS. McMILLAN, *President.*
[SEAL.] F. E. DRIGGS, *Secretary.*

ACCEPTANCE No. 4.

DETROIT, *November* 14, 1879.

The Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company, and the Central Market, Cass

Avenue and Third Street Railway Company hereby accept the terms of the ordinance passed by the common council of the city of Detroit on the eleventh day of November, 1879, and approved by the mayor on the fourteenth day of November, 1879, en-
410 titled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,'" approved November 24, 1862, and the amendments thereto, and for other purposes.

THE DETROIT CITY RAILWAY COMPANY,
By SIDNEY D. MILLER,
President, Duly Authorized by said Corporation.
THE DETROIT & GRAND TRUNK JUNCTION STREET RAILWAY COMPANY,
By SIDNEY D. MILLER,
Duly Authorized by said Corporation.
THE CENTRAL MARKET, CASS AVENUE & THIRD STREET RAILWAY COMPANY,
By SIDNEY D. MILLER,
Duly Authorized by said Corporation.

ACCEPTANCE No. 5.

DETROIT, *December 23rd*, 1880.

The Detroit City Railway Company hereby signifies its acceptance of the terms of the ordinance of the common council of the city of Detroit, entitled "An ordinance authorizing the Detroit City Railway Company to construct and operate a street railway in Farrar street," passed by the council on the tenth day of December, 1880, and approved by the mayor on the eleventh day of December, 1880.

THE DETROIT CITY RAILWAY COMPANY,
[SEAL.] By SIDNEY D. MILLER, *President.*

411 ACCEPTANCE No. 6.

DETROIT, *July 11th*, 1882.

The Detroit city railway hereby accepts the ordinance hereto attached, approved by the mayor of the city of Detroit, on the eighth day of July, 1882, entitled "An ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Griswold street, between State and Larned streets."

An ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Griswold street, between State and Larned streets.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary

to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a double track on Griswold street from State street to Larned street, and so as to connect at said streets with the present main track on said Griswold street: Provided, that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Approved July 8, 1882.

WM. G. THOMPSON, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

412 And the Detroit city railway files this written acceptance in the city clerk's office in compliance with the terms of said ordinance.

By direction of the board of directors.

THE DETROIT CITY RAILWAY,

[SEAL.] By SIDNEY D. MILLER, *President.*

ACCEPTANCE No. 7.

DETROIT, 2*nd April*, 1884.

The Detroit city railway hereby accepts the ordinance hereto attached, approved by the mayor of the city of Detroit on the 29th day of March, 1884, entitled An ordinance to authorize the Detroit City Railway Company to construct and operate a double track on Woodbridge street from the present terminus of its double track near Second street, westward to the east line of Third street, and so as to connect with the main track on said street (in the form of a Y), and to remove the present track across Third street and the turn-table at the terminus thereof, and relay the same across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street thirty feet west of the west line of Third street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, 413 approved November 24, 1862, and the amendments thereof, approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use, and operate a double track on Woodbridge street from the present terminus of its double track near Second street westward to the east line of Third street, and so as to connect with the main track on

said street in the form of a Y, and to remove the present track across Third street, and the turn-table at the terminus thereof, and relay the same across Third street in a southerly direction to a point on Woodbridge street near the south curb of said street thirty feet west of the west line of Third street.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms thereof.

Approved March 29, 1884.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

And the Detroit city railway files this written acceptance in the city clerk's office in compliance with the terms of said ordinance.

By direction of the board of directors.

SIDNEY D. MILLER, *President.*

ACCEPTANCE NO. 8.

DETROIT, *August* 29, 1884.

The Detroit city railway hereby accepts the ordinance hereto attached, approved by the mayor of the city of Detroit on
414 the twenty-first day of July, 1884, entitled "An ordinance to authorize the Detroit City Railway Company to construct and operate a double track through the Campus Martius of the city of Detroit."

An ordinance to authorize the Detroit City Railway Company to construct and operate a double track through the Campus Martius of the city of Detroit.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereof approved November 14, 1879," the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate an additional track through the Campus Martius of said city, extending from the present termination of the double track of said company, near the northerly line of said Campus Martius, southerly to the north line of Fort street extended so as to form one continuous double track for said company across the Campus Martius, provided that the inside rails shall be laid not more than four feet apart.

SEC. 2. This ordinance shall take effect when the company shall have filed in the city clerk's office its written acceptance of the terms hereof.

Approved July 21, 1884.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

415 And the Detroit city railway files this written acceptance in the city clerk's office in compliance with the terms of said ordinance.

By direction of the board of directors.

[SEAL.] SIDNEY D. MILLER, *President.*

ACCEPTANCE No. 9.

DETROIT, *January* 12, 1885.

To the honorable the common council of the city of Detroit.

GENTLEMEN: In compliance with the terms of section four (4) of the ordinance hereto attached, approved by the mayor of the city of Detroit on the fifth day of January, 1885, entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," to wit:

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, fixing and determining a new street railway route and authorizing the Detroit city railway to establish, construct, and operate a street railway thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all of the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, of the amendments thereof and of an ordinance entitled "An ordinance supplementary

416 to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, the Detroit City Railway Company is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and to all requirements and conditions set forth in the said ordinance, viz: Commencing at a point on Ferry street adjacent to the Detroit & Milwaukee junction, running thence along Ferry street to Russell street, thence along Russell street to Farnsworth street, thence along Farnsworth street to Antoine street, thence along Antoine street to Ohio street, thence along Ohio street to Brush street, thence along Brush street to Gratiot street or avenue, and thence over the present track of the Detroit city railway on Gratiot avenue, Randolph street, Monroe avenue and Woodward avenue to Jefferson avenue.

SEC. 2. The said grantees shall complete said railway and have the same in full operation over the entire route prescribed in section 1 of this ordinance on or before the first day of December, A. D.

1885, and said grantees shall, on or before the first day of February, deposit with the controller of said city the sum of five thousand dollars in money or United States stocks or in treasury notes, which said deposit shall be forfeited to the city of Detroit if said railway shall not be constructed and in full operation on the date mentioned; and failure by said company to so construct and operate said railway within the time limited shall also be a forfeiture of the route and rights granted by this ordinance.

417 Upon the completion of said railway as aforesaid, and whenever the same shall be in full operation, the controller shall refund to said grantees the amount so deposited as forfeit with him.

Provided, that should said grantees be prevented from completing said railway by said December 1, 1885, not due to any fault or action of said grantees, then the said grantees may be granted an extension of time within which to so complete said railway.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit City Railway Company shall have filed with the city clerk a written acceptance of the same, and shall execute a good and sufficient bond to the city of Detroit in the sum of $50,000, to be approved by the common council and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed before January 15, 1885.

Approved January 5, 1885.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

The Detroit city railway hereby files with the city clerk this their written acceptance of said ordinance, and files and submits for your approval the bond of said company, with sureties, in the sum of fifty thousand dollars ($50,000.00), as required by said ordinance.

418 In compliance with the terms of section two (2) of said ordinance, the company will deposit with the controller of the city of Detroit the sum of five thousand dollars ($5,000.00) in money, subject to the conditions of said ordinance.

By order of the board of directors.

SIDNEY D. MILLER, *President.*

ACCEPTANCE No. 10.

To the honorable the common council of the city of Detroit:

The undersigned, the Detroit city railway, hereby accepts the ordinance passed by your honorable body and approved by the mayor on the 31st day of July, which ordinance is as follows, to wit:

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, fixing and determining a new street railway route, and authorizing the Detroit city railway to establish, construct and operate a street railway thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 50 of the Revised Ordinances of 1878, and of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto,
419 and for other purposes," approved November 14, 1879.

The Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables, in and through the following streets and avenues of the city of Detroit, and the same to keep, maintain and use and to operate thereon railway cars in the manner and subject to the conditions herein contained and all the requirements and conditions set forth in said ordinance, viz: Commencing at a point on Trumbull avenue at the southerly line of Warren avenue; thence southerly along said Trumbull avenue to the center of Howard street; thence easterly along Howard street to Seventh street; thence along and over the track of the Congress & Baker Street railway on Seventh street, southerly to Congress street, easterly along Congress street to Randolph street and southerly through Randolph street to the terminus of said road at Atwater street.

SEC. 2. The said Detroit city railway shall complete that portion of said route from the intersection of Howard and Seventh streets to Warren avenue and have the same in full operation within one year from the date of the passage of this ordinance.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a good and sufficient bond to the city of Detroit in the sum of $50,000 to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance, provided that such written acceptance and bond shall be filed within ten days of the
420 approval of this ordinance by the mayor.

Approved July 31, 1885.

S. B. GRUMMOND, *Mayor.*

Attest:

ALEX. A. SAENGER, *City Clerk.*

And said company agrees to perform and carry out the requirements of said ordinance.

By the direction of the board of directors.

SIDNEY D. MILLER, *President.*

August 4th, 1885.

ACCEPTANCE No. 11.

Special.

To the honorable the board of aldermen.

GENTLEMEN: The aldermen of the Twelfth and Tenth wards, to whom was referred the petition of the Detroit City Railway Co. for permission to extend their double track on Michigan avenue from Wabash avenue to the west line of the Porter farm, respectfully report that if the common council consent to the extension of the double track, the company propose to furnish all the labor, the city furnishing the material, for paving outside of the tracks, and repave Michigan avenue between said aforesaid-mentioned points at the expense of the company. The length of this pavement is 4,994 feet and the number of yards to be repaved, exclusive of that between the tracks, is 15,708.84 and it is estimated that the labor in repaving this avenue will cost about $1,639.57, which amount
421 it will undoubtedly cost the company. This proposition the aldermen are of the opinion is very liberal, and respectfully recommend that the prayers of petitioner be granted, and the consent of the common council, as provided in section 3, of chapter 98 of the Revised Ordinances of 1884, be given to the company to lay a double track on the aforesaid avenue, and submit an ordinance therefor.

Respectfully submitted,

GEO. W. LOOMER.
A. G. KRONBERG.
WM. PLASS.
ALEXANDER CHAPOTON.
W. H. LANGLEY.
THOMAS McGRATH.

Accepted.

The following is the ordinance:

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the laying of a double track on Michigan avenue from Thirteenth-and-a-half street to Twenty-fifth street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue from Thirteenth-

and-a-half street to Twenty-fifth street, in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

422 SEC. 2. This ordinance shall take effect when the said railway company shall have filed in the city clerk's office its written acceptance of the terms hereof, and a written agreement to pave said street in accordance with the terms of its proposition as reported upon to the board of aldermen, by a special committee August 10, 1886.

The ordinance was read twice by its title and laid on the table.

In compliance with the requirements contained in the foregoing ordinance, the Detroit city railway hereby gives notice of its acceptance of the terms of such ordinance, by filing this acceptance with the city clerk of Detroit.

By order of the board of directors.

SIDNEY D. MILLER, *President.*

Detroit, September 2nd, 1886.

(Special.)

To the honorable the board of aldermen.

GENTLEMEN: The aldermen of the Twelfth and Tenth wards, to whom was referred the petition of the Detroit City Railway Company for permission to extend their double track on Michigan avenue from Wabash avenue to the west line of the Porter farm, respectfully report that if the common council consent to the extension of the double track, the company propose to furnish all the labor, the city furnishing the material, for paving outside of the tracks, and repave Michigan Ave. between said aforementioned points at the expense of the company. The length of this pavement is 4,994 feet, and the number of yards to be repaved, exclusive of that between the tracks, is 15,708.84, and it is estimated that the labor in repaving this avenue will cost about $1,639.57, which amount it will undoubtedly cost the company. This proposition your aldermen are of the opinion is very liberal, and respect-

423 fully recommend that the prayer of the petitioner be granted, and the consent of the common council, as provided in section 3 of chapter 98 of the Revised Ordinances of 1884, be given to the company to lay a double track on the aforesaid avenue, and submit an ordinance therefor.

Respectfully submitted,

GEO. W. LOOMER.
A. G. KRONBERG.
WM. PLASS.
ALEXANDER CHAPOTON.
W. H. LANGLEY.
THOMAS McGRATH.

Adopted.

The following is the ordinance:

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto, authorizing the laying of the double track on Michigan avenue from Thirteenth-and-a-half street to Twenty-fifth street.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Permission, consent and authority is hereby granted to the Detroit City Railway Company to construct a second and maintain a double track in, on and through Michigan avenue from Thirteenth-and-a-half street to Twenty-fifth street, in the city of Detroit, in accordance with the provisions of the ordinance above referred to, being section 3 of chapter 98 of the Revised Ordinances of 1884.

SEC. 2. This ordinance shall take effect when the said rail-
424 road company shall have filed in the city clerk's office its written acceptance of the terms hereof, and a written agreement to pave the said street in accordance with the terms of its proposition as reported upon to the board of aldermen by a special committee August 10, 1886.

This agreement made this 2nd day of September, 1886, between the Detroit city railway and the city of Detroit, witnesseth:

That, referring to the above report of the special committee, and to the above ordinance as a part hereof, the Detroit city railway hereby agrees to pave that part of Michigan avenue from Thirteenth-and-a-half street to Twenty-fifth street, in accordance with the terms of its proposition as reported upon to the board of aldermen by a special committee August 10th, 1886, being the report above set forth. This agreement is made for the purpose of complying with and accepting the terms of said ordinance.

DETROIT CITY RAILWAY,
By SIDNEY D. MILLER, *President.*

ACCEPTANCE 12.

DETROIT, *August* 1, 1887.

To the honorable the common council of the city of Detroit.

GENTLEMEN: In compliance with the terms of section 3 of the ordinance hereto attached, approved by the mayor of the city of Detroit on the twenty-sixth day of July, 1887, entitled "An ordinance supplementary to an ordinance, entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24, 1862, and supple-
425 mentary to amendments and supplements thereto, authorizing and requiring the Detroit city railway to extend its street railway line from the present terminus on Third street or avenue along said Third street or avenue to its intersection with Holden road; thence in a westerly direction along the Holden road to the crossing of the Detroit & Bay City railroad.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the requirements and provisions of chapter 50 of the Revised Ordinances of 1878 and of the amendments thereof, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and the amendments thereto, and for other purposes," approved November 14, 1879, and ordinances supplementary thereto, the Detroit city railway is hereby authorized, permitted and required to lay, construct, use and operate a single street railway track, with suitable switches, turnouts and turn-tables in and through the following streets and avenues in the said city of Detroit, and the same to keep, maintain and use and to operate thereon street railway cars, to wit: From the present terminus of the line or track of said Detroit city railway on Third street or avenue in said city along said Third street or avenue to the Holden road; thence in a westerly direction along the center of said Holden road to the point where the track of the Detroit & Bay City Railroad Company crosses said Holden road.

SEC. 2. That portion of said route from the present terminus of the track on Third street or avenue to the Holden road is to be constructed and laid contemporaneously with the paving of said Third street or avenue to the Holden road; and that portion of said route on the Holden road to be constructed and laid before the first
426 day of January, A. D. 1888, and the whole of said extension to be in operation by January 1, 1888, in connection with and as a part of the line of said Detroit city railway now in operation on said Third street or avenue.

SEC. 3. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a good and sufficient bond to the city of Detroit in the sum of twenty-five thousand dollars, to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance provided that such written acceptance and bond shall be filed within ten days after the approval of the ordinance.

Approved July 26, 1887.

M. H. CHAMBERLAIN, *Mayor.*

Attest:

WILLIAM T. DUST, *City Clerk.*

The Detroit city railway hereby files with the city clerk this their written acceptance of said ordinance and files and submits for your approval the bond of said company with sureties in the sum of twenty-five thousand dollars as required by said ordinance.

By order of the board of directors.

SIDNEY D. MILLER, *President.*

ACCEPTANCE No. 13.

DETROIT, *November 3rd*, 1888.

To the honorable the common council of the city of Detroit.

GENTLEMEN: In compliance with the terms of section 4 of
427 the ordinance hereto attached, approved by the mayor of the city of Detroit on the twenty-seventh day of October, 1888, entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit;" an ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to locate street railways in the city of Detroit," approved November 24, 1862, and supplementary to amendments and supplements thereto authorizing the extension of railway tracks in Trumbull avenue.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and of supplements and amendments thereto, the Detroit city railway is hereby authorized and permitted to extend, lay, construct, use and operate a single street railway track in Trumbull avenue from the southerly line of Warren avenue, connecting with the present track of said railway, northerly through Trumbull avenue to the southerly line of the Lake Shore & Michigan Southern Railway crossing, with suitable switches, turnouts and turn-tables.

SEC. 2. The said Detroit city railway shall have said track completed and the same in full operation within sixty days from the date of the passage of this ordinance.

SEC. 3. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 4. This ordinance shall take immediate effect when
428 said Detroit city railway shall have filed with the city clerk a written acceptance of the same, and shall execute and deliver a good and sufficient bond to the city of Detroit in the sum of $10,000, to be approved by the common council, and conditioned for the faithful performance of the terms of this ordinance; provided that such written acceptance and bond shall be filed within ten days of the approval of this ordinance by the mayor.

Approved October 27, 1888.

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. G. KRONBERG, *City Clerk.*

The Detroit city railway hereby files with the city clerk this *their* written acceptance of said ordinance, and files and submits for your

approval the bond of said company, with sureties, in the sum of ten thousand dollars, as required by said ordinance.

By order of the board of directors.

SIDNEY D. MILLER,
Vice-President.

ACCEPTANCE No. 14.

Know all men by these presents, that the Detroit city railway, a corporation organized under the laws of the State of Michigan, of Detroit, Wayne county, Michigan, as principal, and George Hendrie, William K. Muir and Truman H. Newberry, all of the city of Detroit aforesaid, as sureties, are held and firmly bound unto the city of Detroit, a municipal corporation, in the penal sum of fifty thou-
sand dollars ($50,000) lawful money of the United States of
429 America, to be paid to the said city of Detroit or its assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of them, firmly by these presents.

Sealed with our seals and dated this third day of January, A. D. 1889.

The condition of this obligation is such that, whereas, the municipal authorities of the city of Detroit have by the terms of an ordinance duly passed and entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862,' and supplementary to amendments and supplements thereto, and supplementary to an ordinance entitled 'An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and to the amendments thereto, and for other purposes,' approved November 14, 1879, and all amendments and supplements thereto," approved January 3, 1889, thereby authorizing the Detroit city railway to lay, construct, use and operate a street railway, with convenient tracks for turnouts, side tracks, curves and switches in and through the streets and avenues therein named in the city of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions therein contained and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884, and in the said ordinance and amendments and supplements thereto.

And by the further terms of said ordinance said Detroit city railway is required to execute a good and sufficient bond to the city of Detroit in the sum of fifty thousand dollars ($50,000), conditioned for the faithful performance of the terms of said ordinance.

430 Now, therefore, if the said Detroit city railway shall faithfully perform all the terms and conditions of the said ordi-

nance, as therein required, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.] DETROIT CITY RAILWAY,
[SEAL.] By GEO. HENDRIE, *President.*
[SEAL.] GEO. HENDRIE.
[SEAL.] T. H. NEWBERRY.
W. K. MUIR.

Attest:
CAMERON CURRIE, *Secretary.*

ACCEPTANCE 14½.

Resolutions.

Jour. 1884, p. 62.

By Ald. Wilcox:

Whereas, section 1 of the ordinance approved November 14, 1879, provides that the Detroit City Railway Company shall extend its track on Gratiot avenue from Chene street to the city limits, within such period as the common council shall by resolution hereafter declare to be necessary, and,

Whereas, said railway track on Gratiot avenue has been extended from Chene street to McDougall avenue; therefore,

Resolved, the board of councilmen concurring, That the common council hereby declare that for the interest and convenience of the public a necessity exists for the extension of the railway track on Gratiot avenue from McDougall avenue to the easterly line of the city limits, and to that end the Detroit City Railway Com-
431 pany is hereby directed to cause said railway track to be extended before or contemporaneously with the paving of said avenue.

Resolved, That the city clerk be directed to notify said company of the action of the common council in the premises.

Adopted as follows:

Yeas—Ald. Alter, Appelt, Beggs, Chase, Fairbairn, Finney, Gies, Jackson, Kaiser, Kelly, Kessler, Lemmer, Littlefield, Loomer, Nagle, O'Reilly, Ralph, Sweeney, Warren, Westcott, Wieser, Wilcox and the president—23.

Nays—None.

ACCEPTANCE 15.

DETROIT, *March* 17, 1884.

To the honorable the common council of the city of Detroit.

GENTLEMEN: In compliance with the resolution of your honorable body, which passed the board of aldermen on the 4th day of March, A. D. 1884, and the board of councilmen on the 7th day of March, 1884, directing the Detroit city railway to extend its track on Gratiot avenue in said city from McDougall avenue easterly to the city limits before or contemporaneously with the paving of said avenue, the undersigned respectfully submits:

1. That on the 2d day of October, 1882, by an agreement between the Detroit City Railway Company and your honorable body, it was understood and agreed that the track on Gratiot avenue should be extended easterly to the city limits as far as said avenue was paved and contemporaneously therewith.

2. That said Detroit city railway hereby assents to the reso-
432 lution above referred to, and agrees to lay its track on Gratiot avenue to the city limits as fast as said avenue is paved and contemporaneously therewith.

Your obedient servants,

DETROIT CITY R'Y,
By GEO. HENDRIE,
Treasurer.

ACCEPTANCE 16.

The Detroit City Railway
with
The City of Detroit.

Acceptance of Ordinance.

An ordinance supplementary to an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit," approved November 24th, 1862, "and the amendments thereto and for other purposes," approved November 14th, 1879, and ordinances supplementary thereto, to adjust differences with the Detroit city railway in relation to past city taxes, and to provide for future taxation.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. From the first day of July, 1882, to the thirty-first day of December, 1896, said railway shall pay to the city treasurer one and one-half per cent. of its gross receipts. From the first day of January, 1897, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall pay to the city treasurer two per cent. of its gross receipts. At the expira-
433 tion of each half year during the entire period above mentioned the treasurer of said railway shall submit to the city treasurer his sworn statement of such gross receipts, and shall therewith pay to said city treasurer the percentage so found to be due.

SEC. 2. From the first day of July, 1882, to the end of its franchise, under the ordinance approved November 14th, 1879, said railway shall also pay the city of Detroit such taxes for municipal purposes as have been up to this date, and shall be thereafter levied and assessed upon the lots and parcels of lands and buildings thereon which are the property of said railway. Such tax shall be levied and assessed in the same manner and shall be payable at the same time as other city taxes on lands.

SEC. 3. In adjusting the amount due under the foregoing sections from the first day of July, 1882, to the thirty-first day of December, 1886, the railway shall be credited with all sums heretofore

paid by them on account of taxes or percentages on gross receipts, no interest shall be charged to either party. The railway shall pay to the city treasurer such balance as may be found due forthwith upon its ascertainment; thereupon all suits and proceedings between the city and railway shall be discontinued without costs to either party, and all unsettled claims in reference to such taxes shall be discharged by both parties.

SEC. 4. The above-mentioned percentage payments and the tax on lands provided for, to accrue from January 1st, 1887, to the end of the franchise of said railway, are to be paid by said railway and received by the city in lieu of and in discharge of all taxes, license fees and charges of any kind against the property, capital stock, rights and franchises of said company, which have been or may be levied, assessed or imposed under any present or future law or authority.

434 If hereafter said railway shall be, either directly or indirectly, charged with or required to pay any other or further tax, license fees or charges, then the amount so paid shall be credited by the city to said railway upon the amount of the percentage payment to become due under the ordinance; and the obligations to make such percentage payments shall be satisfied and discharged to that extent; and in no event shall said railway be liable to pay under any form of tax, license or charge any sums in excess of said percentage and the tax on the lands of said railway as above provided.

Provided, however, that nothing herein contained shall be construed as a consent on the part of the Detroit city railway to the levying or collecting of any other or further tax, license or charge than the tax on the gross receipts hereinbefore provided for, and the tax on its lands, as hereinbefore specified; nor shall any such other or further tax, license or charge be valid or binding without the consent in writing of said Detroit city railway.

SEC. 5. Subject to the provisions of this ordinance, which are only intended to change the ordinance of November 14, 1879, as to the percentage on gross receipts and to modify existing ordinances in reference to the charges by taxation and percentages on gross receipts, all ordinances and parts of ordinances not inconsistent herewith are hereby affirmed and continued in force.

SEC. 6. This ordinance shall take effect when the Detroit city railway has filed its written acceptance of the same with the city clerk.

This ordinance, having been vetoed by the mayor, was finally passed by the two-thirds vote of all the councilmen and aldermen elected, notwithstanding the objections of the mayor, on the fourth day of January, A. D. 1887.

WM. T. DUST, *City Clerk.*

435 DETROIT, MICH., *January* 6, 1887.

On compliance with the provisions of section 6 of the foregoing ordinance, the Detroit city railway hereby files its written acceptance of the same.

And, in consideration of the stipulation on the part of the city to be observed, will likewise discharge the obligations imposed on said railway, and consents to the change in the terms and conditions of its contract with the city, which is involved in said ordinance.

By order of the board of directors.

THE DETROIT CITY RAILWAY,
SIDNEY D. MILLER, *President.*

[SEAL.]

Attest:

JAMES HOUGH, *Secretary.*

EXHIBIT "B 1."

This indenture, made the first day of December, in the year of our Lord one thousand eight hundred and ninety, between the Detroit city railway, a corporation under the laws of Michigan, party of the first part, and the Detroit Street Railway Company, a corporation under the laws of Michigan, party of the second part, witnesseth: That in consideration of the sum of one dollar ($1) and for other valuable considerations, paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part doth by these presents bargain, sell, assign and transfer to the party of the second part all of the following described property:

First. All of the franchise rights, privileges and interests in which the party of the first part has any title or right.

436 Second. All of the rights of the first party to any rights of way, easements, licenses, leasehold interests, tracks, buildings, barns and stables.

Third. All of the horses, cars, rolling stock, tools, implements of all kinds, and all other personal property, of any kind whatsoever, belonging or in anywise appertaining to the party of the first part, wheresoever situated.

To have and to hold the said interests, goods, chattels and effects, of every kind whatsoever, to the said party of the second part, its successors and assigns, absolutely and to its and their use forever. And the party of the first part hereby covenants with the party of the second part that it is the legal owner of the said interests, goods, chattels and effects; that they are free from all incumbrances, except certain mortgages assumed by the party of the second part; that it has a good right to sell the same, as aforesaid; and that it will warrant and defend the same against all legal claims and demands of all persons, except the before-mentioned mortgages.

In witness whereof the party of the first part has caused its corporate seal to be hereto attached and these presents to be executed

by its vice-president and treasurer, they being thereunto duly authorized.

(Signed) SIDNEY D. MILLER, *Vice-President.*
STRATHEARN HENDRIE, *Treasurer.*

In presence of—
(Signed) SIDNEY T. MILLER.
C. CURRIE.

[SEAL.]

437 STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 17th day of December, A. D. 1890, before me, a notary public in and for said county, came Sidney D. Miller and Strathearn Hendrie, to me known to be the same persons who executed the foregoing instrument and acknowledged that they executed the same fully for the purposes therein mentioned, as vice-president and treasurer, respectively, of the Detroit city railway.

(Signed) SIDNEY T. MILLER,
Notary Public, Wayne County, Mich.

EXHIBIT "B 2."

This indenture, made this sixteenth day of September, in the year of our Lord one thousand, eight hundred and ninety-one, between the Detroit Street Railway Company, a corporation organized under the laws of the State of Michigan, party of the first part, and the Detroit Citizens' Street Railway Company, a corporation organized under the laws of Michigan, party of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of one dollar ($1) to be paid by, and for other good and valuable consideration moving to it from the party of the second part, the receipt whereof is acknowledged, doth hereby grant, bargain sell, convey, release, and confirm to the said party of the second part and to its successors and assigns forever all of the real estate belonging to said party of the first part, wherever situated and including specially the lands, tenements and hereditaments owned by or belonging to the party of the first part including therein the following-described premises, situate and being in the city of Detroit, County of Wayne, State of Michigan, known and described as follows:

438 1. The premises known as No. 12 Woodward avenue, described as follows: The south thirty-seven (37) feet of the northerly fifty-seven and one-half (57½) feet of lot numbered one hundred and eighty-six (186); also the south thirty-seven (37) feet of the northerly thirty-seven and one-half (37½) feet of lot numbered one hundred and eighty-seven (187); also the north six inches (6 in.) of the easterly fifteen (15) feet of lot numbered one hundred and eighty-seven; all of said property lying on the east side of Woodward avenue, in block numbered four (4) of the governor and

judges' plan of said Detroit, and being used chiefly as the offices of the company; also

2. Lot numbered four (4) and the west one-half (½) of lot numbered three (3) south of Woodbridge street, and lot numbered four (4) and the west one-half (½) of lot numbered three (3) north of Franklin street, all of the subdivision of the Antoine Beaubien farm, so-called, being the property used chiefly for repair shops, and for storage purposes; also

3. Lot numbered eight (8) of the subdivision of the Haggerty lot on the Lafferty farm, so-called, according to the plat recorded in Wayne county registry of deeds in Liber 1 of Plats, page 263, situated on the north side of Michigan avenue; also lots numbered one (1), north of Michigan avenue, and thirteen (13), eighteen (18), nineteen (19), and twenty-four (24) east of Huron street, in Larned's subdivision of the Lafferty farm, according to the plat thereof recorded in Wayne county registry in Liber 60 of Deeds on page 293, being the stables and other property used chiefly with the Michigan Avenue line, also

4. All that part of outlot numbered twenty-two (22) of the subdivision of the Jones and Crane farm lying north of Hancock avenue as extended; also the easterly one hundred (100) feet of the southerly forty (40) feet of block numbered twenty-three (23) of the Crane farm aforesaid, the plat of said farm being recorded in
439 the Wayne county registry in Liber 1 of Plats on page 117; said premises being located between Third and Fourth avenues; being the stables and other property used chiefly in connection with the Cass and Third Avenue line; also

5. Lots numbered eight (8), nine (9), ten (10), eleven (11), twenty-six (26) and twenty-seven (27) of Luther Beecher's subdivision of part of the Lognon farm; also the westerly fifty-seven and forty-two one-hundredths (57.42) feet of lot numbered twenty-one (21) in block one (1), private claim twenty-seven (27), subdivision of lot seven (7); also lot numbered sixty-one (61) of the subdivision of lot numbered two (2) of the Lognon farm, so called; the six first-mentioned lots being on the south side of Baker street, and the others being on the north side of Labrosse street, being the stables and other property used chiefly with the Congress and Baker Street lines; also

6. Lots numbered one (1) and two (2) of the subdivision of park lots numbered forty-seven (47) and forty-eight (48), located between Woodward avenue and Cass avenue, excepting so much thereof as is now occupied by Amsterdam street, being the stables and other property used chiefly with the Woodward Avenue line; also

7. Lots numbered sixty-three (63), sixty-four (64), sixty-five (65), of the subdivision of outlots numbered one hundred and eighty (180), one hundred and eighty-two (182) and one hundred and eighty-four (184), of the subdivision of the Lambert Beaubien farm, so called, being located on the south side of Ohio street, being the stables and other property used chiefly with the Brush and Russell line; also

8. Lots numbered nine (9), ten (10), eleven (11), twelve (12), thirteen (13) and fourteen (14), of Kanady's subdivision of outlots

numbered six (6) of the Guoin farm, south of Ferry avenue, and also lot numbered eight (8) of the Kirby estate's subdivision of outlot numbered five (5) of said Guoin farm, on the east side of
440 Russell street; being the stables and other property used chiefly with the Brush and Russell Street line; also

9. Lots one (1) and two (2) of block seven (7), and lots five (5) and six (6), block seven (7) of the Lieb farm, so called, according to a subdivision by the commissioners in partition of the estate of Peter Girard, deceased, the plat of which is recorded in the register's office for Wayne county, aforesaid, in Book 264 of Deeds, on page 278, to which record reference is hereby made for greater certainty, said first two lots being located on the northerly side of Gratiot avenue, and the other two situated in the rear thereof; being the stables and other property used chiefly in connection with the Gratiot Avenue line; also

10. Lot numbered seventy-three (73) of Scotten and Lovett's subdivision of all that part of private claim five hundred and eighty-three (583), lying between the Dix road and the Chicago road; and also lot numbered seventy-eight (78) of Scotten and Lovett's subdivision of all that part of private claim five hundred and eighty-three (583), lying north of the Dix road and south of the D., M. & T. R. R. and Michigan avenue; the plat of the said subdivision being recorded in the registry of deeds for Wayne county, in Liber 1 Plats, on page 198, being the stables and other property used chiefly in connection with the Michigan Avenue line; also

11. Lot numbered one (1) of Crane & Wesson's section of the Labrosse farm, so called, and the subdivision thereof south of the Holden road; being the stables and other property used chiefly in connection with the Cass Avenue and Third Street line; also

12. Lots numbered sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), sixty-seven (67), sixty-eight (68), sixty-nine (69), seventy (70), seventy-one (71), seventy-two (72), seventy-three (73), seventy-four (74), seventy-five (75), seventy-six (76),
441 seventy-eight (78) and seventy-seven (77) of Woodbridge's subdivision of outlots one hundred and twelve (112), one hundred and thirteen (113) and one hundred and fifteen (115) of the subdivision of the Woodbridge farm; also

13. Lots numbered fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19) and twenty (20) of block numbered twenty-three (23), on the west side of Chene street, of the James Campau farm, so called, in said city of Detroit; being the stables and other property used chiefly in connection with the Chene Street line; also

14. Lot numbered one (1) of the Beaufait farm, so called, private claim nineteen (19), according to the plat thereof recorded in the registry of deeds for Wayne county, in Liber Thirty (30) of Deeds, on page 3. (That strip off of the easterly part of said lot one (1) which is used as a part of an alleyway is so used under an agreement between Sidney D. Miller, trustee, and the Union Iron Company, by which agreement the right at any time to take possession of the aforesaid strip is expressly reserved.) Also, all that part of

lot numbered two (2) of the Beaufait farm aforesaid, bounded as follows: Beginning at a point in the southerly line of Jefferson avenue twenty (20) feet easterly from the northwesterly corner of said lot two (2), said point being in the easterly line of the right of way mentioned in a deed from Peter Desnoyers to the Peninsular Iron Company (recorded in said registry of deeds in Liber 102 of Deeds, page 645); thence southerly and parallel with the westerly line of said lot two (2), five hundred (500) feet to a point, thence easterly and parallel with the southerly line of Jefferson avenue, one hundred and seventy-six and $\frac{68}{100}$ (176.68) feet to a point in the westerly line of lot one (1) aforesaid; thence northerly five hundred (500) feet along the said westerly line of lot one (1) to its point of intersection with the southerly line of Jefferson avenue;

442 thence westerly along said southerly line of Jefferson avenue one hundred and seventy-six and $\frac{68}{100}$ (176.68) feet to the place of beginning. Also, the right of way over that part of the westerly twenty (20) feet of said lot two (2) mentioned in the aforesaid deed from Peter Desnoyers that adjoins the lands hereby conveyed; such right of way to be used in common by said grantee, its successors and assigns, as appurtenant to the lands herein conveyed, with the Peninsular Iron Company, and its assigns, and all other persons who are now or who may be hereafter entitled through conveyance from said Peninsular Iron Company to use the same; being the stables and other property used chiefly in connection with the Jefferson Avenue line.

15. Lots numbered seventy-three (73), seventy-four (74) and seventy-five (75) of Daniel Scotten's subdivision of that part of private claim seventy-seven (77), Knaggs & Hubbard farm, so called, lying between Vinewood and Indian or Hubbard avenues, recorded in Book 5 of Plats, on page 23.

16. Lots numbered twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), twenty-eight (28), twenty-nine (29) and thirty (30) in block "E" of the Cass farm, so called, according to the plat thereof in the registry of deeds for Wayne county in Book 9 of Deeds at page 409; said lots being situate on the north side of Front street in said Detroit; also

17. Lots numbered sixty-six (66), sixty-seven (67) and sixty-eight (68) in Miller and Wilcox's subdivision of outlots one hundred and eighty (180), one hundred and eighty-two (182) and one hundred and eighty-four (184) of the L. Beaubien farm, so called, said lots being situate on the north side of Ohio street in Detroit aforesaid; according to the plat thereof, recorded in said registry in Book 1 of Plats, page 86; also

443 18. The westerly part of lot numbered ten (10) in block numbered sixteen (16) of the subdivision of the Dequindre farm so called, situated on the northerly side of Fort street, and is thirty-four and seventy-five one-hundredths (34.75) feet wide in front on said Fort street; one hundred and forty-six and sixty-eight

one-hundredths (146.68) feet deep on the easterly side; thirty-four and seventy-five one-hundredths (34.75) feet wide in the rear, and one hundred and forty-five (145) feet in depth on the westerly side, be the same more or less.

The easterly part of lot ten (10) in block sixteen (16) of the subdivision of the Dequindre farm, so called, situated on the northerly side of Fort street and is twenty (20) feet wide in front on said Fort street, one hundred and forty-eight and thirty-six one-hundredths (148.36) feet deep on the easterly side on Dequindre street or Railroad; thirty-one and forty-eight one-hundredths (31.48) feet wide in the rear, and one hundred and forty-six and sixty-eight one-hundredths (146.68) feet in depth on the westerly side, be the same more or less.

All that certain piece or parcel of land lying and being in the city of Detroit, Wayne county and State of Michigan, and known and described as lot number seventeen (17) in block numbered four (4) of the Witherell farm, so called.

Lot numbered twenty-four (24) Clark's subdivision of lot number four (4) of the Witherell farm, so called, and situate on the north side of Fort street, in said city of Detroit.

Lot eleven (11), block fifteen (15), of the subdivision of the Dequindre farm.

Also, all and singular the lines of street railway now owned by the party of the first part in the city of Detroit, especially including the lines of street railway on Jefferson, Woodward, Michigan, Gratiot, Cass and Third, and Trumbull avenues, and on Brush and
444 Russell streets and on Congress and Baker streets and on Fort street east, Chene street and Mack street with all the tracks, side tracks, spurs, switches and appurtenances, and all and singular the rights, privileges and franchises of the said The Detroit Street Railway Company acquired under the laws of the State of Michigan, and under the ordinances and agreements with the city of Detroit, and by purchase and transfer from other corporations.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any way appertaining. To have and to hold the said premises unto the said party of the second part and to its successors and assigns forever. The said party of the first part for itself, its successors and assigns, doth covenant and agree to and with the said party of the second part, its successors and assigns, that at the time of the delivery of these presents it has a good and indefeasible title in fee-simple of the before-granted premises, and that they are free from incumbrances excepting a certain mortgage made to secure certain bonded indebtedness by the party of the first part to Sidney D. Miller and W. K. Muir as trustees, dated January 2d, 1890, and that it will, and its successors and assigns shall forever warrant and defend the same against all lawful claims whatsoever, excepting the said mortgage.

In witness whereof the party of the first part has caused its cor-

porate seal to be hereto set and these presents to be signed by its president and secretary, they being thereunto authorized.

DETROIT STREET RAILWAY COMPANY.
(Signed) GEO. HENDRIE, *President.* [L. S.]
C. CURRIE, *Secretary.* [L. S.]

Signed, sealed and delivered in presence of—
(Signed) JOHN C. DONNELLY.
CHAS. W. SMITH.

[SEAL.]

445 STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 16th day of September, A. D. 1891, before me, a notary public in and for said county, came George Hendrie, president, and Cameron Currie, secretary of the company described in the foregoing instrument, to me known to be its president and secretary respectively, and acknowledged the same to be their free act and deed, and that they executed the same freely, they being thereunto duly authorized.

(Signed)
[SEAL.]

CHAS. W. SMITH,
Notary Public, Wayne County, Mich.

EXHIBIT "B 3."

This indenture, made this sixteenth day of September, in the year of our Lord one thousand eight hundred and ninety-one, between the Detroit City Railway, a corporation under the laws of the State of Michigan, party of the first part, and the Detroit Citizens' Street Railway Company, a corporation under the laws of the State of Michigan, party of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar ($1) and other good and valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, doth by these presents grant, bargain and sell, release and convey unto the said party of the second part, and its successors and assigns, forever, all and singular the lines of street railway owned by the party of the first part, in the city of Detroit, especially including the lines of street railway on Jefferson,
446 Woodward, Michigan, Gratiot, Cass, Third and Trumbull avenues, and on Brush and Russell streets, and on Congress and Baker streets, and on Fort street east, Chene street and Mack street, with all the tracks, side tracks, spurs, switches, railways, fixtures, property and appurtenances, rights, privileges and franchises of the said the Detroit city railway, acquired under the laws of the State of Michigan and under the ordinances of the city of Detroit and by purchase, and transfer from other corporations (this conveyance is executed by the party of the first part for the purpose of confirming any conveyance of the above-described prop-

erty which has heretofore been made by the Detroit Street Railway Company to the party of the second part), together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said premises and properties as above described, with the appurtenances unto the said party of the second part, and to its successors and assigns forever. And the said the Detroit city railway, for itself, its successors and assigns, doth covenant, grant, bargain and agree, to and with the said party of the second part, its successors and assigns; that at the time of the ensealing and delivery of these presents it is well seized of the above-granted premises and property in fee-simple; that they are free from all incumbrances whatever, excepting a certain mortgage to secure certain bonded indebtedness of the said party of the first part, made by it to William K. Muir and Sidney D. Miller, as trustees, and recorded in the office of the register of deeds for said county, and further excepting any liens which may have been placed on the said property since December 1st, 1890, and that it will, and its successors shall forever warrant and defend the same against all lawful claims whatsoever, excepting the said mortgage given to William K. Muir and Sidney D. Miller, trustees.

447 In witness whereof, the said party of the first part hath hereunto caused its corporate seal to be set and these presents to be signed by its vice-president and treasurer.

DETROIT CITY RAILWAY,
(Signed) By SIDNEY D. MILLER, [L. S.]
Vice-President.
STRATHEARN HENDRIE, [L. S]
Treasurer.

Signed, sealed and delivered in the presence of—

(Signed) SIDNEY T. MILLER.
(Signed) FRED. T. SIBLEY.

[SEAL.]

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this third day of February, in the year one thousand eight hundred and ninety-two, before me, the subscriber, a notary public in and for said county, personally appeared Sidney D Miller and Strathearn Hendrie to me known to be the vice-president and secretary of the railway mentioned in the within instrument, to me known to be the same persons described in and who executed the within instrument, and acknowledged the execution of the same as their free act and deed as the vice-president and secretary of the Detroit city railway, they being thereunto duly authorized.

(Signed) SIDNEY T. MILLER,
Notary Public, Wayne County, Mich.

448 EXHIBIT "B 4."

This indenture, made the first day of December, in the year of our Lord one thousand eight hundred and ninety, between the Grand River Street railway, a corporation under the laws of Michigan, party of the first part, and the Grand River Railway Company, a corporation under the laws of Michigan, party of the second part, witnesseth:

That in consideration of one dollar ($1) and for other valuable considerations paid by the party of the second part to the party of the first part, the receipt whereof is hereby acknowledged, the party of the first part doth hereby bargain, sell and assign and transfer to the party of the second part all of the following-described property:

First. All of the franchise rights, privileges and interests in which the party of the first part has any title or right, of any kind whatsoever.

Second. All of the rights of the first party to any rights of way, easements, licenses, leasehold interests, tracks, buildings, barns and stables.

Third. All of the horses, cars, rolling stock, tools, implements of all kinds, provender and all other personal property of any kind whatsoever, in anywise belonging to the party of the first part, wheresoever situated.

To have and to hold the said interests, goods, chattels and effects of every kind whatsoever, to the said party of the second part, its successors and assigns, absolutely and to its and their use forever. And the party of the first part hereby covenants with the party of the second part that it is the legal owner of the said interests, goods, chattels and effects; that they are free from all incumbrances,
449 except a certain mortgage assumed by the party of the second part; that it has a good right to sell the same as aforesaid; and that it will warrant and defend the same against all lawful claims and demands of all persons, except the before-mentioned mortgage.

In witness whereof the party of the first part has caused its corporate seal to be hereto set and these presents to be signed by its vice-president and its managing director, they being thereunto duly authorized.

(Signed) WM. HENDRIE,
[SEAL.] *Vice-President of the Grand River Street Railway.*
GEO. M. HENDRIE,
Managing Director of the Grand River Street Railway.

Witness—Attest:
(Signed) C. CURRIE, *Secretary.*

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this sixth day of February, A. D. 1891, before me, a notary public in and for said county, personally came William Hendrie

and George M. Hendrie, and acknowledged that they had executed the foregoing instrument as vice-president and managing director respectively of the Grand River Street railway, and that the same is their free act and deed as vice-president and managing director of the Grand River Street railway, for the purposes therein mentioned.

(Signed) SAFFORD S. DELANO,
[SEAL.] *Notary Public, Wayne County, Mich.*

EXHIBIT "B 5."

This indenture, made this sixteenth day of September, in the year of our Lord one thousand eight hundred and ninety-one be-
450 tween the Grand River Railway Company, a corporation organized under the laws of Michigan, party of the first part, and the Detroit Citizens' Street Railway Company, a corporation organized under the laws of Michigan, party of the second part.

Witnesseth: That in consideration of the sum of one dollar ($1), and for other valuable considerations, paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first party doth by these presents bargain, sell, assign and transfer to the party of the second part, its successors and assigns, all of the following-described property:

First. All of the franchise rights, privileges, and interests in which the party of the first part has any title or right.

Second. All the rights of the party of the first part to any rights of way, easements, licenses, contract rights, leasehold interests, tracks, buildings, barns and stables.

Third. All of the horses, cars, rolling stock, tools, implements of all kinds, and all other personal property, chattels and chattels real of every kind whatsoever, belonging to or in anywise appertaining to the party of the first part, wheresoever situated, except moneys and credits on hand, it being understood that the party of the first part shall and will pay the interest on its one hundred and fifty thousand dollars of bonds up to the date of the delivery of this bill of sale.

To have and to hold the said properties, rights, goods, chattels, chattels real and effects of every kind whatsoever, to the said party of the second part, its successors and assigns, absolutely and to its and their use forever. And the party of the first part hereby covenants with the party of the second part that it is the legal owner of the said properties, rights, goods, chattels, chattels real and effects; that they are free from all incumbrances, except a
451 certain mortgage made to secure certain bonded indebtedness to George M. Hendrie and Will. C. McMillan, trustees, dated December 19th, 1889; that it has a good right to sell the same, as aforesaid; and that it will warrant and defend the same against all legal claims and demands of all persons, except said mortgage.

In witness whereof, the party of the first part has caused its corporate seal to be hereto attached and these presents to be executed by its vice-president and secretary, they being thereunto duly authorized.

GRAND RIVER RAILWAY COMPANY,

(Signed) W. C. McMILLAN, [L. S.]
Vice-President.

(Signed) C. CURRIE, *Secretary.* [L. S.]

Signed, sealed and delivered in presence of—

(Signed) JOHN C. DONNELLY.
(Signed) CHAS. W. SMITH.

[SEAL.]

STATE OF MICHIGAN, *County of Wayne,* } ss:

On this sixteenth day of September, 1891, before me, a notary public in and for said county, came W. C. McMillan, vice-president, and C. Currie, secretary, of the company described in the foregoing instrument, to me known to be its president and secretary, respectively, and acknowledged that they executed said instrument of their own free act and deed, they being thereunto duly authorized.

(Signed) CHAS. W. SMITH,
Notary Public, Wayne County, Mich. [SEAL.]

452 EXHIBIT "B 6."

This indenture, made this 16th day of September, in the year of our Lord one thousand eight hundred and ninety-one, between the Grand River Railway Company, a corporation organized under the laws of Michigan, party of the first part, and the Detroit Citizens' Street Railway Company, a corporation organized under the laws of Michigan, party of the second part, witnesseth:

That the party of the first part, for and in consideration of the sum of one dollar ($1) paid by, and for other good and valuable considerations moving to it from, the party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, convey, release and confirm to the said party of the second part and to its successors and assigns forever, all of the real estate belonging to the party of the first part wherever situated including specially the following-described premises, situate and being in the city of Detroit, county of Wayne, State of Michigan, known and described as follows:

1. The lots numbered eighteen (18), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), and forty-two (42), of F. O. Davenport's subdivision of outlots twenty-eight (28) and twenty-nine (29) of the Forsyth

farm, so called, according to the plat thereof recorded in the Wayne county registry in Liber 10 of Plats, page 20.

2. All that part of lot numbered thirty-seven (37) of private claim numbered 729 in the Twelfth ward of said city of Detroit, said lot thirty-seven (37) fronting on Sullivan avenue on the westerly side thereof, between Myrtle and Magnolia streets, known and de-
453 scribed as follows: Beginning at a point one hundred and twenty (120) feet west of said Sullivan avenue on the northerly line of said lot thirty-seven (37); thence southerly and parallel with the westerly line of said Sullivan avenue one hundred and seventy-seven and sixty one-hundredths (177.60) feet to a point; thence westerly and at right angles with said Sullivan avenue to the westerly line of said lot thirty-seven (37); thence northerly along said westerly line of lot thirty-seven (37) to its point of intersection with the northerly line of said lot; thence along said northerly line of said lot to the point of beginning, together with the right of way granted in a deed from Joseph W. Dailey to the Grand River Street railway, which deed is recorded in Liber 326 of Deeds on page 253; also lots numbered six (6), seven (7), eight (8), nine (9), ten (10), and eleven (11), of John Zeisler's subdivision of lots numbered thirty-eight (38) and forty-three (43) of Johnston's subdivision of private claims 727 and 729 between Sullivan and Maybury avenues and north of Myrtle street.

3. Lots numbered one (1), two (2), three (3), four (4), five (5), and six (6) of Backus' subdivision of outlot ninety-five (95), private claims 22 and 248 of Woodbridge farm, so called, according to the recorded plat thereof.

4. Also, all and singular the lines of street railways now owned by said party of the first part in the city of Detroit, and especially including the lines on Woodward and Grand River avenues, and Crawford, Third, Myrtle and East Congress streets, with all the tracks and appurtenances, and all and singular the rights, privileges and franchises of the said The Grand River Railway Company, including all franchises acquired under the laws of the State of Michigan, and under the ordinances of and agreements with the city of Detroit, and by purchase and transfer from other corporations.

Together with all and singular the hereditaments and ap-
454 purtenances thereunto belonging or in anywise appertaining.

To have and to hold the said premises unto the said party of the second part and to its successors and assigns forever. The said party of the first part, for itself, its successors and assigns, doth further covenant and agree to and with the party of the second part, its successors and assigns, that at the time of the delivery of these presents it has a good and indefeasible title in fee-simple of the before-granted premises, and that they are free from incumbrances, excepting a certain mortgage made to secure certain bonded indebtedness by the party of the first part to George M. Hendrie and William C. McMillan, trustees, and its successors and assigns shall, forever warrant and defend the same against all lawful claims whatsoever, excepting the said mortgage.

In witness whereof, the said party of the first part has caused its

corporate seal to be hereto set and these presents to be signed by its vice-president and secretary, they being duly authorized.

GRAND RIVER RAILWAY COMPANY,
(Signed) W. C. McMILLAN, *Vice-President.* [L. S.]
C. CURRIE, *Secretary.* [L. S.]

Signed, sealed and delivered in presence of:
(Signed) JOHN C. DONNELLY.
(Signed) CHAS. W. SMITH.
[SEAL.]

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this sixteenth day of September, A. D. 1891, before me a notary public, in and for said county, came W. C. McMillan,
455 the vice-president, and C. Currie, secretary of the company described in the foregoing instrument, to me known to be its president and secretary, respectively, and acknowledged the same to be their free act and deed, and that they executed the same freely, they being thereunto duly authorized.

(Signed) CHAS. W. SMITH,
[SEAL.] *Notary Public, Wayne County, Mich.*

EXHIBIT "B 7."

Jour. 1891, p. 520.

On motion of Ald. Scott:

An ordinance providing for the introduction of rapid transit on the lines of the street railway owned and operated by the Detroit Street Railway Company, and to provide for certain extensions and changes of existing lines, and of the term for which the same may be operated by said company, laid on the table June 23, was taken up.

The ordinance was placed on the order of third reading.

Ald. Reves offered the following substitute for section (5) five, viz:

SEC. 5. The said company is hereby authorized to lay an additional track on Trumbull avenue, from its intersection with Michigan avenue northerly to the Lake Shore & Michigan Southern Railroad crossing, and the same to use and operate as a double-track line; also to use and operate a double street railway track in, along and through Twenty-fourth street to Dix avenue, thence along Dix avenue to the Michigan Central Railroad crossing; also on Junction avenue northerly from its intersection with Dix avenue to the Michigan Central Railroad crossing, and said line to be operated in connection with the Congress & Baker Street line, and to be a part thereof.

456 Also to extend its double street railway track in, along and through Griswold street from where it now turns into Larned street southerly to Jefferson avenue, and the same to connect with its present Jefferson Avenue track by suitable curves and switches.

Also, to extend its single-track railway on Larned street from where it turns into Griswold street easterly in, along and through said Larned street to Brush street, and northerly on said Brush street to Congress street, and the same to connect with the Congress Street track by suitable curves and switches for the purpose of extending and completing the present loop line to the Third Street depots.

Also, to lay an additional track along and through Baker street from Twenty-fourth street to Sixth street, thence along Sixth street to Michigan avenue.

Also to extend its present track on Baker street from Seventh street to Sixth street, thence along Sixth street to Michigan avenue, and said tracks to be connected with suitable curves with the tracks on Michigan avenue, and to be operated as a double-track line.

Also, to extend its double tracks on Michigan, Woodward and Gratiot avenues, and its single track on Dix avenue to the city limits as the same now exists, or as said limits may be from time to time extended.

Also, to lay, construct, use and operate in connection with any and all of said tracks, suitable switches, curves, turnouts and turntables.

Also, when the Grand River Railroad Company has removed one of its tracks from Woodward avenue, north of Fort street, the three tracks then remaining on the street shall be used in common by both companies, and the same may be extended south from Jefferson avenue to Atwater street, connecting there with the terminal tracks south of Atwater street.

The charges for construction and maintenance of these
457 tracks and the paving between the outside rails thereof shall be borne by the companies in proportions to be agreed upon between them.

The easterly track shall be used by cars going north, and the westerly track by cars going south. The center track shall be used for switching so that the through cars on the other track shall not be unnecessarily delayed.

Ald. Vernor offered the following as a further amendment to the substitute of Ald. Reves, as follows:

Provided, that it is further hereby agreed upon that the Detroit City Railway Company shall occupy but two tracks upon any one street in the city of Detroit, and wherever more than two tracks exist, they shall at their own expense remove the extra track within ninety days from the date of the adoption of this ordinance.

Lost.

Ald. Reves moved to strike out the words Woodward avenue in section five (5).

Carried.

Ald. Thompson moved to strike out the words double track on Trumbull avenue.

Lost.

The question then recurring upon the substitute of Ald. Reves—was then adopted.

Ald. Vernor moved to amend section seven (7) as follows:

Provided, that it is further hereby agreed upon that the Detroit City Railway Company shall issue free change-off tickets on each of their routes, which tickets shall entitle the holder to a continuance of the trip to any point in the city reached by the lines of the company.

Ald. McGuire offered the amendment to the amendment of Ald. Vernor.

458 SEC. 8. The said Detroit City Railway Company shall sell and place on sale with their conductors workingmen's tickets at the rate of eight tickets for twenty-five cents, each ticket good for one continuous trip over any of the lines of said company, from one terminus to the opposite terminus thereof, between the hours of five and eight o'clock in the morning and between four and seven o'clock in the evening of each day, and said company shall further issue to each passenger upon any of the lines operated by them within the city, including the lines operated under the style of the Detroit City Railway Company, a transfer, free of charge, to and upon any intersecting or other line or lines operated by said Detroit Street Railway Company.

SEC. 9. The right to repeal, alter or amend this, or any other ordinance heretofore passed, granting rights, privileges or franchises to the Detroit Street Railway Company is hereby reserved, and where not before reserved by the common council, is hereby granted and assented to by said Detroit Street Railway Company and Grand River Railway Company, as part consideration for the granting of the above.

Carried.

The amendment of Ald. Vernor and the amendment of Ald. McGuire *was* then adopted.

Ald. Vernor offered the following amendment:

Provided, that it is further hereby agreed upon that the Detroit City Railway Company shall exchange transfer tickets with any other company by whom they may be requested so to do at the intersecting points of the lines of both companies, said transfer tickets to entitle the holder to a continuance of the trip to any point in the city reached by the line of the company receiving the same.

Carried.

Ald. Vernor offered the following amendment:

459 Provided, that it is hereby further agreed upon that the Detroit City Railway Company shall, for a consideration to be agreed upon, grant permission to any other company that may desire to run their cars over the tracks of this company, for a distance not to exceed three-quarters of a mile, for the purpose of obtaining terminal facilities; and for the purpose of ascertaining proper consideration for such privilege, there shall be three persons appointed, whose decision shall be final, one of these persons to be appointed by each interested company, and the third, who shall act as chairman, to be selected by the two so appointed.

Ald. Reves moved to lay the whole matter on the table, and when

the council adjourns it adjourn until July 1 at 12 o'clock m. for the purpose of reconsidering the ordinances.

EXHIBIT "B 8."

Reconsideration.

Jour. 1891, p. 541.

Ald. Reves moved to take up the Detroit City Street Railway ordinance.

Carried.

Ald. Vernor offered the following amendment:

Provided, that it is hereby further agreed upon that the Detroit City Railway Company shall, for a consideration to be agreed upon, grant permission to any other company that may desire to run their cars over the tracks of the Detroit City Railway Company, for a distance of not to exceed three-quarters of a mile, for the purpose of obtaining terminal facilities; and for the purpose of ascertaining the proper consideration to be paid for such privilege, there shall be three persons appointed whose decision shall be final, one of these persons to be appointed by each interested company,
460 and the third, who shall act as chairman, shall be selected by the two so appointed.

Lost.

The following amendment was offered by Ald. Vernor:

"Provided, that it is further agreed upon that the Detroit City Railway Company shall, upon order of the common council of the city of Detroit, cause a more frequent service to be given upon the lines of the company, at any time the accommodation of passengers is found regularly to be inadequate to comfortably carry the passengers."

Carried.

Ald. Buhrer offered the following amendment:

SEC. 9. Provided, that the said Detroit City Railway Company shall pay to the city of Detroit a tax of two and one-half ($2\frac{1}{2}$) per cent. upon its gross receipts, to be paid on 1st day of July in each year, and in addition thereto, shall pay a tax upon the assessed valuation of all its real estate, the buildings thereon, and all its personal property situate within the city of Detroit.

Lost.

Ald. Buhrer offered the following amendment:

SEC. 9. Provided, that the Detroit City Railway Company in lieu of this valuable extension of franchise and as a bonus therefor shall pay into the treasury of the city of Detroit the sum of one hundred thousand ($100,000) dollars within one year from date of the adoption of this ordinance.

Lost.

Ald. Reves moved to strike out sections eight and nine.

Carried.

Ald. Griggs offered the following amendment:

Whenever the storage battery shall have been proven to be a commercial success for street-car uses, the company if operating its lines by the overhead wire, electric system, shall remove all poles and wires and use the storage battery or one of the other methods provided for by this ordinance.

Adopted.

461 Ald. Vernor offered the following amendment:

SEC. 9. That said railway company shall sell workingmen's tickets from 5.30 to 8.30 a. m., and in the evening from 5 to 8.30 p. m., at the rate of eight tickets for twenty-five cents, said tickets to be sold by the conductors and to be good for one fare during the above hours.

Lost.

The following section was then adopted as section 8:

SEC. 8. This ordinance shall take effect when the said Detroit Street Railway Company shall file with the city clerk an acceptance thereof in writing, and shall file therewith its bond in the penal sum of fifty thousand dollars conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bond shall be filed within 30 days of the date of the passage of this ordinance.

Ald. McGuire offered the following amendment:

"The rights, privileges and powers hereby conferred upon the Detroit Street Railway Company are granted upon the condition and with the provision that said company shall not, during the time it shall exercise such powers, and avail itself of the rights and privileges hereby conferred, exact of its employés more than ten hours' labor for a day's work or service, nor shall it employ or keep in its employ any person or persons who are not resident electors of the city of Detroit, and said company shall, in the event of its violation of either of these conditions or provisions, forfeit all rights, power and privileges conferred upon it hereby."

Ald. Reves offered the following as a substitute:

SEC. 7. The rights, privileges and powers hereby conferred upon the Detroit Street Railway Company are granted upon the condition and with the provision that said company shall not, during the time it shall exercise such powers and avail itself of the rights

462 and privileges hereby conferred, exact of its employés more than ten hours' labor for a day's work or service, nor shall it knowingly employ any person or persons who are not resident electors of the State of Michigan or who would be electors on arriving at twenty-one years of age, and for any violation of the foregoing conditions said company shall forfeit to the city of Detroit the sum of $100.00, which may be recovered in an action by said city in any court of competent jurisdiction.

Provided, however, that the above restrictions shall apply only to those actually engaged in operating the cars and to hostlers, and, provided further, that said company is able by reasonable effort to employ sufficient number of resident electors to operate its lines.

Adopted.

Ald. Lennane moved to strike out double track on Baker street and Trumbull avenue.

Lost.

That said company give tickets at the rate of eight for twenty-five cents to be good for a continuous trip on all lines between hours of 5 and 7 a. m. and 5 and 7 p. m. on each and every day except Sunday.

Carried.

Ald. Reves, to strike out the amendment of Ald. Thompson.

Carried.

Ald. McGuire offered the following amendment:

Said company shall further issue to each passenger upon any of the lines operated by them within the city a transfer, free of charge, to and upon any intersecting or other line or lines operated by said Detroit Street Railway Company.

Lost.

The ordinance as then amended was then adopted by the following vote:

463 Yeas—Ald. Amos, Barnes, Brennan, Fisher, Grant, Griggs, Langley, Meier, McGuire, McIntyre, O'Regan, Reves, Reschke, Reynolds, Richert, Roth, Scher, Scott, Schmidt, Uthes, Watson and the president—22.

Nays—Ald. Buhrer, Lennane, Lowry, Thompson, Vernor, Webster—6.

The ordinance was then confirmed by its title.

Ald. Lowry and Ald. Webster were excused from further attendance on this session.

On motion of Ald. Reves:

An ordinance to amend section five of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in the city of Detroit,' approved November 24th, 1862, and the amendments thereto and for other purposes, approved November 14th, 1879," and to add a new section thereto, to stand as section eight, laid on the table June 23rd, was taken up.

The ordinance was placed on the order of third reading.

Ald. Buhrer moved to strike out the words twelve years in section two (2).

Lost.

Ald. Reves moved to strike out the word city and insert the word street in the last line, sec. 8, and second line of sec. 3.

Carried.

The ordinance as amended was then adopted as follows:

Yeas—Ald. Amos, Barnes, Brennan, Fisher, Grant, Griggs, Langley, Meier, McGuire, McIntyre, O'Regan, Reves, Reschke, Reynolds, Richert, Roth, Scher, Scott, Schmidt, Uthes, Watson and the president—22.

Nays—Ald. Buhrer, Lennane, Thompson, Vernor—4.

The ordinance was then confirmed by its title.

464 EXHIBIT "B 9."

Communications from City Officers.

Jour. 1891, pp. 553, 554.

From his honor the mayor.

To the honorable the common council.

GENTLEMEN: I hereby return without my approval, the ordinance adopted by your honorable body on the first day of July, 1891, entitled, "An ordinance providing for the introduction of rapid transit on the lines of the street railway owned and operated by the Detroit Street Railway Company, and to provide for certain extensions and changes of existing lines, and of the term for which the same may be operated by said company."

My reasons for non-approval of the ordinance are as follows:

A private ownership of natural monopolies in cities is necessarily the cause of an immense financial loss to the citizens. It is a bad financial arrangement. This can be proved and it is a sufficient reason for a change if we had no other. It is generally believed that this is the chief source of corruption in city governments. I do not assert that this could be proved in respect to our city; it is only urged as the result of general experience. But that it is a foolish financial arrangement can be proven beyond question by European and American experience on a large scale. Denunciation of particular persons should be tempered by the consideration that the system is largely to blame. Still, the people cannot see why valuable property should be given away unless through private instead of public motives.

Section seven of the ordinance above alluded to confers upon the Detroit Street Railway Company a franchise to "own, use and operate all of the lines of street railway now owned and operated by it (the Detroit city railway) and all lines and extensions
465 of lines and tracks provided for by this ordinance for the period of 30 years from the date of the passage of this ordinance."

By the ordinance subsequently passed at the same meeting, extending the franchise of the Detroit City Railway Company, and conferring new franchises and powers upon it, that company is authorized to take such franchise and powers, for its assigns. It is further provided in the last-mentioned ordinance that the powers, and franchises, on the Detroit City Railway Company by all precedent ordinances back to and including November 24, 1862, shall be conferred upon the Detroit Street Railway Company.

It is thus evident that the effect of the ordinance is, first, to enable the old city railway company to assign all its franchises and property to the new corporation; and, second, to confer upon the new corporation a franchise embracing the rights to operate a street railway upon all thoroughfares of the city for the period of thirty years without compensation to the city.

The city's valuable franchises are property, as much so as the money of the city raised by taxation in the city treasury, and, in my opinion, no property of the city should be given away, either as a reward of merit, or as a subsidy.

The pretence for this donation urged by the Detroit Railway Company, otherwise known and now appearing as the Detroit Street Railway Company, is that it will give Detroit rapid transit, but we cannot afford to buy rapid transit at the immense cost of these franchises. To grant what is now asked by the city railway company is to bind this city hand and foot for thirty years—that is to say, for an entire generation. The fact that sagacious business men stand ready to pay millions of dollars for such franchises show- what they are worth to the city.

If the Detroit City Railway Company, or the Detroit Street Railway Company, does not choose to give us rapid transit, the right to furnish the new and improved facilities for travel over the
466 lines operated by that or those companies could be sold for from three to four millions of dollars.

The question remaining is this: Whether, because the franchise of the old city railway company has not expired, it can refuse to give the new methods of carriage demanded by Detroit before the expiration of the old term, and in that way compel us to lose the immense value of the franchise as the price for giving such methods.

In the first place, it is extremely doubtful as I am advised, whether the franchise of the city railway company can last longer than thirty years from November, 1862; but if it be true, that the old company is vested with an unexpired term, and refuses to give us what the people want, during that unexpired term, except upon unreasonable, not to say outrageous conditions, then the right of the city railway company for its unexpired term, which is undoubtedly the city railway's property, should be taken and condemned under the power of eminent domain.

Their property in this franchise for the unexpired term is no more sacred and no more above the law and above the power of eminent domain than the property of private citizens which is taken every day for public purposes. The value of that unexpired term of the city railway company under the constitution of this State, would be appraised by twelve citizens, and freeholders of this community, and it may be remarked in passing, that the returns of the railway company to the city treasurer's office of its gross receipts for the purpose of taxation would be evidence of the value of its franchise which the city railway company could not successfully contradict.

There is no good reason why Detroit should not follow the example of other cities and relieve the burdens of the people incurred by constantly increasing rates of taxation by selling such
467 valuable franchises for the benefit of the city treasury. Either that, or to leave the money of the people in their own pockets, by reducing the fare to the minimum amount.

Gentlemen of the council, I cannot believe that when these ordinances were passed by you, that you knew that you were granting

a new franchise of thirty years to a new corporation created but six months ago; and not only this, but that you were consenting to a transfer to such new corporation, in addition to all of the new rights granted to it, all the exceptional and remarkably valuable franchises already vested in the old city railway company.

Very respectfully, H. S. PINGREE, *Mayor.*

Accepted, and leave being granted the following resolution was offered:

By Ald. Griggs:

Resolved, That a committee of five be appointed, to whom shall be referred the message of the mayor and the ordinance now before us, with instructions to investigate to the fullest extent their time and opportunities will permit of the entire street railway question, both as to existing and proposed corporations, and to act in conjunction with his honor, the mayor, and the citizens' committee, and be it further

Resolved, That the committee on streets and ordinances be and they are hereby instructed to defer further action in the matter of street railway franchises until such time as the committee provided for herein, shall have reported to this body.

Adopted as follows:

Yeas—Ald. Amos, Fisher, Grant, Griggs, Langley, Meier, McGuire, O'Regan, Reves, Reschke, Reynolds, Richert, Schmidt, Uthes, Watson and the president—16.

468 Nays—Ald. Barnes, Buhrer, Coots, Gilmore, Hoffman, Lennane, Lowry, Roth, Scher, Scott, Thompson, Webster—12.

EXHIBIT "B 10."

Jour. 1893, p. 62.

An ordinance to provide for the sale of certain tickets for fare upon the cars of the Detroit city railway, its successors and assigns.

Whereas section 6 of an ordinance approved January 3, 1889, being part of chapter 109 of the Revised Ordinance- of the City of Detroit for the year 1890, provides that the right to make such rules, orders and regulations as may from time to time be deemed necessary to protect the interest, welfare and accommodation of the public in relation to the Detroit city railway, its successors and assigns is reserved to the common council of the city of Detroit; and

Whereas paragraph D of section IV of said ordinance, approved January 3d, 1889, with reference to said railway, being a part of said chapter 109 of the Revised Ordinances of the City of Detroit for the year 1890, provides that said railway company shall issue and sell tickets for fare at the rate of eight (8) tickets for twenty-five cents, to be good for transportation between certain hours of each day:

It is hereby ordained by the people of the city of Detroit—

SECTION 1. That from and after the 15th day of February, 1893,

it shall be the duty of the said Detroit city railway, its successors and assigns, to furnish and provide the conductors of each and every car operated by said company within the limits of the
469 city of Detroit with tickets to be good for transportation between the hours of 5.30 and 7.30 a. m. and 5.15 and 6.15 p. m., each ticket to be good for transportation as provided in said ordinance.

SEC. 2. From and after the 15th day of February, A. D. 1893, the Detroit city railway, and its successors and assigns, shall issue and sell by its conductors or any other duly authorized agents, to person or persons applying therefor upon each and every car operated by said company within the limits of the city of Detroit, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of 5.30 and 7.30 a. m. and 5.15 and 6.15 p. m., at the rate of eight (8) tickets for twenty-five cents, each ticket to be good for one fare.

SEC. 3. For each and every day in which the said Detroit city railway, its successors and assigns, shall neglect to provide tickets and refuse to sell to persons applying therefor as herein provided, the said company may be complained of as for a distinct offense and punished as hereinafter provided.

SEC. 4. Any violation of or failure to comply with the provisions or requirements of this ordinance shall be punished by a fine not to exceed three hundred dollars and costs, and such fine, when so imposed, may be recovered from the person or corporation so convicted, in an action at law in the proper courts.

SEC. 5. This ordinance shall take immediate effect.

Approved February 4, 1893.

H. S. PINGREE, *Mayor.*

Attest:

CHARLES R. FORSTER, *City Clerk.*

470 EXHIBIT "B 11."

Jour. 1895, p. 85.

Communications.

An ordinance to amend sections 1 and 2 of an ordinance entitled An ordinance to provide for the sale of certain tickets for fare upon the cars of the Detroit city railway, its successors and assigns, approved February 4, 1893.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. That sections 1 and 2 of an ordinance entitled "An ordinance to provide for the sale of certain tickets for fare upon the cars of the Detroit city railway, its successors and assigns," approved February 4, 1893, be and the same are hereby amended so as to read as follows:

SEC. 1. It shall be the duty of the Detroit City Railway Company, its successors and assigns, to furnish and provide the conductors of each and every car operated by the said company within the limits

of the city of Detroit with tickets to be good for transportation between the hours of 5.30 and 7 a. m. and 5.15 and 6.15 p. m., each ticket to be good for transportation as provided for in said ordinance.

SEC. 2. The Detroit City Railway Company, its successors and assigns, shall issue and sell by its conductors or other duly authorized agents, to any person or persons applying therefor upon each and every car operated by the said company within the limits of the city of Detroit, tickets to be good for transportation as provided in said ordinance of January 3, 1889, between the hours of
471 5.30 and 7 a. m. and 5.15 and 6.15 p. m., at the rate of eight tickets for twenty-five cents, each ticket to be good for one fare.

SEC. 2. This ordinance shall take immediate effect.

EXHIBIT "C 1."

Jour. 1888, p. 852.

Reports of Committees.

Special—Streets and ordinances.

To the honorable the common council.

GENTLEMEN: Your committee on streets and ordinances, to whom was referred the petition of the Grand River Street Railway Company for permission to construct a line on Crawford street, a double track on Grand River avenue and a single track on Congress street east, respectfully reports that it has duly considered the same, and believing that a large majority of the people living on the line or in the neighborhood of said streets would be largely accommodated by the proposed lines, herewith report the following ordinance and recommend its adoption.

Respectfully,

J. E. LALLY.
D. C. KELLOGG.
ERNEST L. RESCHKE.

An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884 of the City of Detroit, and all amendments and supplements thereto.

SECTION 1. Subject to all the provisions, regulations and requirements of chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Street Railway Company to construct, operate and maintain a
472 double-track street railway in, along and through Grand River avenue, so called, in the city of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turn-tables and cross-overs; also to construct, operate and maintain in, along and through Crawford street, in the said city of Detroit, commencing at a point on the track of

said Grand River Street Railway Company, and running thence northerly along the center of said Crawford street to the Detroit & Bay City Railroad crossing, together with all suitable and necessary turnouts, turn-tables, curves and switches; also to construct, operate and maintain a single-track street railway in, along and through Congress street east in said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company and running thence easterly along said Congress street east to the easterly limits of the city of Detroit, or so far as said Congress street may be opened, and until said Congress street east shall be opened to the city limits, or one year thereafter, as hereinafter provided, the said Grand River Street Railway Company—the permission of the Detroit city railway having first been obtained for such action—shall connect its track at the corner of Mt. Elliott and Congress streets east with that of the Detroit city railway and run its cars over said tracks of said Detroit city railway along Mt. Elliott and Jefferson avenue east of Mt. Elliott to the Boulevard, thence to a point at a convenient distance from the Belle Isle Park bridge to be fixed by the board of public works.

SEC. 2. Said double track on said Grand River avenue shall be laid so that the outer rails of said track shall be equidistant from a line drawn along the center of said street, and in addition to the paving required to be done by said Grand River Street Railway Company, under its present ordinance, it shall lay and maintain the pavement between the double tracks hereby authorized.

473 SEC. 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration of the permission hereby granted the said company shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets, for a single fare of five cents for one continuous trip; and shall also agree to issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof traveled continuously either way when offered for fare by persons taking passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon.

SEC. 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance; provided, however, that the railway track along and upon Congress street east, between Mt. Elliott avenue and the city limits, shall be laid, constructed and in use within one year after

that portion of Congress street east shall be opened for public use; provided, also, that the said Grand River Street Railway Company shall within 30 days after the approval of this ordinance by
474 the mayor file its acceptance thereof in writing and shall give within the same period of time a bond in the penal sum of $20,000 for the faithful performance by it of the terms and conditions of this ordinance.

SEC. 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

Read twice by title, ordered printed and laid on the table.

EXHIBIT "C 2."

Jour. 1888, p. 853.

Reports of Committees.

Majority report.

To the honorable the common council.

GENTLEMEN: Your committee on streets and ordinances, to whom was referred the petition of the Detroit city railway, for permission to construct and operate additional street railway lines, respectfully report that it has carefully considered the same, and believing that such permission under the terms submitted would be of great advantage to the public, herewith report the following ordinance and recommend its adoption.

Respectfully,

J. E. LALLY.
D. C. KELLOGG.
ERNEST L. RESCHKE.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and supplementary to amendments and supplements thereto, and
475 supplementary to an ordinance entitled 'An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and to the amendments thereto' and for other purposes," approved November 14, 1879, and all amendments and supplements thereto.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the Year 1884 and of amendments thereof and supplements thereto, and of an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 14, 1879," and all amendments and supplements thereto, the Detroit city railway is hereby authorized and permitted to lay, construct,

use and operate a street railway with convenient tracks for turnouts, side tracks, curves and switches in and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate thereon street railway cars in the manner and subject to the conditions herein contained and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884, and in the said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street east turns onto Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street east to Mt. Elliott avenue, thence along
476 said Mt. Elliott avenue to the Jefferson Avenue double track, thence along said Jefferson Avenue double track to the easterly limits of the city.

Also to extend its track on Cass avenue from where it now turns onto Ledyard street northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the eastern limits of the city of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

Also, to lay, construct, use and operate a single street railway track in, along and through Mack street from its conjunction with Gratiot avenue in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the said Detroit city railway, if it shall desire so to do to run its cars from any of its
477 lines over and upon any street railway track which may be authorized and constructed on the bridge and approaches thereto, to Belle Isle park, to said park, with all the privileges and rights which may be granted to any other street railway.

SEC. 2. The track hereby authorized on Congress, Brush and Fort

street east, shall be constructed and in operation within one year from the date of the passage of this ordinance; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets, shall be constructed and in operation within one year from the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue, shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed and in operation within two years from the date of the passage of this ordinance.

SEC. 3. Permission and authority is hereby given to the said Detroit city railway to run its cars at a rate of speed not exceeding eight miles an hour, and whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best, in its judgment, for the purpose of properly and safely conducting its business in said city of Detroit upon any or all of its said lines now in use
478 and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the board of public works.

SEC. 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit city railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit city railway shall file a written acceptance thereof within 30 days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to wit:

A. It shall carry passengers from its Cass Avenue and Third Street, Trumbull Avenue, Michigan Avenue, and Congress and Baker Street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon to any point on Congress and Baker Streets, Michigan Avenue, Trumbull Avenue and Cass Avenue and Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets, shall be entitled to be transferred at Fort street through and conveyed by cars running on the proposed line on Fort street east to any point on said Fort Street line in one continuous trip, or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot and Michigan Avenue

lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip.

479 A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to be transferred at Chene street to said Chene Street line and to be carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride over said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge, and from the Belle Isle bridge in reverse direction, over the Fort Street East, Chene Street and Gratiot Avenue lines for a single fare of five cents for one continus trip.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer of passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon over any of its lines in said city for a single fare, to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs "A," "B" and "C" of this section.

E. It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines, and shall run the cars on the said Woodward Avenue line to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

480 SEC. 5. All rights conferred and obligations imposed under the terms of this ordinance, shall continue during the period fixed by the ordinance approved November 14, 1879, that is to say, until November 14, 1909.

SEC. 6. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 7. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a bond to the city of Detroit in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance, provided such written acceptance and bond shall be filed within 30 days of the approval of this ordinance by the mayor.

Accepted, read twice by title and ordered printed and laid on the table.

Minority Report.

To the honorable the common council.

GENTLEMEN: The undersigned, members of the committee on streets and ordinances, to whom was referred the several petitions and communications with reference to street railway franchises, would respectfully report that in the judgment of the undersigned, the subject-matter reported by the other members of the committee has not received that full and careful consideration which the subject demands.

While the agitations and competing propositions have enforced from the present companies a few concessions in behalf of the public, we feel that further concessions must be made to insure suit-
481 able facilities, cheap fares and an adequate return for the great privileges now enjoyed by the street-car companies of this city.

The time has arrived when the following specific concessions should be granted by the present and all future street railways in this city:

1. The laboring people should be entitled to three-cent fares going to and from their labor during at least two hours in the morning and evening.

2. The privilege of a transfer ticket from one line to another should be granted, so as to enable passengers to reach any portion of the city over any line or lines for one fare.

3. It has been demonstrated in other cities, in streets much narrower than Woodward avenue, that one double track is sufficient to accommodate all of the street-car traffic of this city, and we think that there should be only one double track down Woodward avenue or on any other street.

4. The growth of our city and the employment of telephone girls and other employés during the night necessitates at least the running of at least one car every hour all night long.

5. All companies should be compelled to pay its general and city taxes, as well as one per cent. of its gross receipts, as required by the present ordinance.

6. In the judgment of your committee, the remaining streets running east from the city hall should not all be given up to railway traffic, as in the judgment of your committee all such privileges may be confined to at least one other street and the joint use thereof granted so as to accommodate the entire public and thereby save such beautiful residence streets as Congress and Champlain for driving purposes.

In view of the foregoing reasons and reasonable demand,
482 which in the judgment of the undersigned should be secured before any new or further privileges are granted to the present or new companies, your committee respectfully protests against the adoption of the report and ordinance submitted by the

other members of the committee and respectfully recommend that the entire subject be referred to proper committees, who shall take ample time to fully consider the subject.

Respectfully,

J. HAYES.
M. W. McGUIRE.
FRANK J. BLESER.

Laid on the table and ordered printed in the proceedings.

Leave being granted, the following resolution was offered:

By Ald. McGuire:

Resolved, That a committee of five members of the common council, together with the members of the public works, be appointed to lay out and complete a plan of the city of Detroit for street railway traffic sufficient to meet the demands of the public, and to prepare and submit the same with the necessary ordinances and specifications, for the sale and disposition thereof.

Laid on the table and ordered printed in the proceedings.

Ald. Hayes moved the whole matter be laid on the table and printed in the proceedings.

Lost.

Ald. Jacob moved the majority report be adopted and the ordinance placed on its first and second reading by its title.

Ald. Griggs moved to amend by referring the whole matter back to the committee on streets and ordinances, with instructions to ask for the concessions embodied in the minority report.

Lost.

483 The previous question was called for.

The question then recurring on the motion of Ald. Jacob the same prevailed.

EXHIBIT "C 3."

Jour. 1888, p. 855.

Special.

To the honorable the common council.

GENTLEMEN: Your committee on streets and ordinances, to whom was referred the petition of the Fort Wayne & Elmwood Railway Company for leave to lay, construct and maintain and use street railway tracks and thereon to maintain and operate street railway cars, upon and along certain streets, avenues and places in the city of Detroit, respectfully report that they have considered the same and believed that such a franchise would be a public benefit and of great advantage to the inhabitants of this city, recommend that the prayer of the petition be granted. An ordinance is herewith submitted setting forth in full the streets upon which such railway tracks shall be located and the conditions thereof. And your committee recommend the adoption of such ordinance.

Respectfully,

J. E. LALLY,
D. C. KELLOGG.

An ordinance to authorize the Fort Wayne & Elmwood Railway Company to extend and operate its railway upon and along certain streets, avenues and alleys of the city of Detroit.

It is hereby ordained by the people of the city of Detroit:

484 SECTION 1. Subject to the ordinances of Detroit, now in force, relative to the Fort Wayne & Elmwood Railway Company, except so far as they may be modified by this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use street railway tracks, and thereon to maintain and operate street railway cars, upon and along the following streets, avenues and places in the city of Detroit, namely:

Commencing at and connecting with the railway track of said company at the junction of Woodward avenue and Fort street, running thence along and on the Campus Martius to the north part of Cadillac square, then along and upon the north part of Cadillac square to Bates street, thence upon and along Bates street to the railway track of said company on Randolph street.

Also, commencing at and connecting with the railway track of said company at the junction of Randolph and Champlain streets, running thence along, upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Mt. Elliott avenue, running thence upon and along Mt. Elliott avenue to Fort street, thence upon and along Fort street to Baldwin avenue, thence upon and along Baldwin avenue to Champlain street, there connecting with the railway track of said company to be built on said street.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Helen avenue, running thence upon and along Helen avenue to Jefferson avenue; thence, with the consent of the Detroit city railway first obtained, upon the tracks of the Detroit city railway upon and along Jefferson avenue to the junction of Jefferson and Frontenac

485 avenues; thence to a point at a convenient distance from the Belle Isle Park bridge, to be fixed by the board of public works.

Also, an additional track on Champlain street from Elmwood avenue to Mt. Elliott avenue.

SEC. 2. All of the railway track hereby authorized to be laid and maintained shall be laid and maintained in the center of the street or avenue, except upon and along the Campus Martius and Champlain street, wherein the location of said track shall be established by the board of public works, who are hereby authorized and required to determine and establish the line or location of such tracks upon and along the Campus Martius and Champlain street as shall in their judgment be deemed best for the public convenience, and

at the same time secure to the said company the full enjoyment of the rights and privileges hereby granted.

SEC. 3. The lines of street railway hereby authorized shall be single-track roads without turnouts, side tracks or switches, except upon Champlain street between Elmwood avenue and Mt. Elliott avenue, where an additional track is authorized (but without side tracks, turnouts or switches), and on Helen avenue and between Jefferson avenue and the Belle Isle Park bridge, where the railway shall be a single-track road, with suitable and convenient side tracks, turnouts and switches. All side tracks, turnouts and switches shall be removed from Croghan street, from Randolph street to McDougall avenue, those remaining to be used only for the private convenience of said company, and the street railway on Croghan street shall be made and continued a single-track road without side tracks, turnouts or switches, except as above provided.

SEC. 4. The said company shall complete the work of laying and constructing the railway tracks hereby authorized, and shall
486 have the same in operation within one year from the passage of this ordinance, provided, however, that the railway tracks upon and along Fort street between Mt. Elliott and Baldwin avenues shall be laid, constructed and in use within one year after that portion of Fort street shall be opened for public use.

SEC. 5. The street railway track heretofore laid and constructed by said company under the provisions of the ordinance mentioned in section 1, and the street railway tracks authorized to be laid and constructed by this ordinance, shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof at or within the city limits, from thence running along the lines of said railway, as heretofore and hereby established, to the eastern termini thereof, and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously either way, over the whole or any portion thereof, shall pay only one fare, the amount of which shall not exceed five cents. Provided, however, that said company shall issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for one transportation over the entire route of said company, or any portion thereof, traveled continuously either way, between the hours of 5.30 and 7 o'clock a. m. and 5.15 and 6.15 o'clock p. m., each ticket to be good for one fare, and this proviso to become operative within sixty days after the passage of this ordinance.

SEC. 6. The said company is hereby authorized to use in operating its street railway, electricity or any proper or suitable motive power used by any other street railway company now or hereafter organized and operating in the city of Detroit, subject, however, to the same conditions and limitations.

SEC. 7. The said company shall have the right to run and
487 operate its street railway cars across Belle Isle Park bridge whenever any other street railway company shall be granted the right to do so, with the same conditions and privileges as shall be accorded to such other company.

SEC. 8. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same and shall have executed and delivered to the city of Detroit a good and sufficient bond in the penal sum of $20,000 to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance.

Accepted, read twice by its title, ordered printed in the proceedings and laid on the table.

EXHIBIT "C 4."

Jour. 1888, p. 879.

An ordinance to authorize the Fort Wayne & Elmwood Railway Company to extend and operate its railway upon and along certain streets, avenues and places of the city of Detroit.

It is hereby ordained by the people of the city of Detroit.

SECTION 1. Subject to the ordinances of Detroit now in force, relative to the Fort Wayne & Elmwood Railway Company, except so far as they may be modified by this ordinance, consent, permission and authority are hereby given and granted to the Fort Wayne & Elmwood Railway Company to lay, construct, maintain and use street railway tracks, and thereon to maintain and operate street railway cars, upon and along the following streets, avenues and places in the city of Detroit, namely:

Commencing at and connecting with the railway track of said company at the junction of Woodward avenue and Fort
488 street, running thence along and on the Campus Martius to the north part of Cadillac square, thence along and upon the north part of Cadillac square to Bates street, thence upon and along Bates street to the railway track of said company on Randolph street.

Also, commencing at and connecting with the railway track of said company at the junction of Randolph and Champlain streets, running thence upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also, commencing at and connecting with the railway track of said company at the junction of Randolph and Champlain streets, running thence upon and along Champlain street to the railway track of said company at the junction of Champlain street and Elmwood avenue.

Also, commencing at and connecting with the railway track of said company at the junction of Champlain street and Mt. Elliott avenue, running thence upon and along Mt. Elliott avenue to Fort street, thence upon and along Fort street to Baldwin avenue, thence upon and along Baldwin avenue to Champlain street, there connecting with the railway track of said company to be built on said street.

Also, commencing at and connecting with the railway track of

said company at the junction of Champlain street and Helen avenue, running thence upon and along Helen avenue to Jefferson avenue; thence, with the consent of the Detroit city railway first obtained upon the tracks of the Detroit city railway upon and along Jefferson avenue to the junction of Jefferson and Frontenac avenues; thence to a point at a convenient distance from the Belle Isle Park bridge, to be fixed by the board of public works.

Also, an additional track on Champlain street from Elmwood avenue to Mt. Elliott avenue.

SEC. 2. All of the railway tracks hereby authorized to
489 to be laid and maintained shall be laid and maintained in the center of the street or avenue, except upon and along the Campus Martius and Champlain street, wherein the location of said tracks shall be established by the board of public works, who are hereby authorized and required to determine and establish the line or location of such tracks upon and along the Campus Martius and Champlain street as shall in their judgment be deemed best for the public convenience, and at the same time secure to said company the full enjoyment of the rights and privileges hereby granted.

SEC. 3. The lines of street railway hereby authorized shall be single-track roads without turnouts, side tracks or switches, except upon Champlain street between Elmwood avenue and Mt. Elliott avenue, where an additional track is authorized (but without side tracks, turnouts or switches), and on Helen avenue and between Jefferson avenue and the Belle Isle Park bridge, where the railway shall be a single-track road with suitable and convenient side tracks, turnouts and switches. All side tracks, turnouts and switches shall be removed from Croghan street, from Randolph street to McDougall avenue, those remaining to be used only for the private convenience of said company, and the street railway on Croghan street shall be made and continue a single-track road, without side tracks, turnouts or switches, except as above provided.

SEC. 4. The said company shall complete the work of laying and constructing the railway tracks hereby authorized, and shall have the same in operation within one year after the passage of this ordinance; provided, however, that the railway track upon and along Fort street, between Mt. Elliott and Baldwin avenues, shall be laid, constructed and in use within one year after that portion of Fort street shall be open for public use.

SEC. 5. The street railway tracks heretofore laid and con-
490 structed by said company under the provisions of the ordinance mentioned in section one, and the street railway tracks authorized to be laid and constructed by this ordinance shall be deemed one railway, and the route of such railway shall commence at the western terminus thereof, at or within the city limits, from thence running along the lines of said railway as heretofore and hereby established, to the eastern terminus thereof, and in collecting fare the whole of said distance shall be deemed one route, and each passenger traveling the same continuously either way over the whole or any portion thereof shall pay only one fare, the amount of which shall not exceed five cents. Provided, however,

that said company shall issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company or any portion thereof, traveling continuously either way, between the hours of 5.30 and 7 o'clock a. m., and 5.15 and 6.15 o'clock p. m., each ticket to be good for one fare, and this proviso to become operative within 60 days after the passage of this ordinance.

SEC. 6. The said company is hereby authorized to use in operating its street railway, electricity or any proper or suitable motive power used by any other street railway company now or hereafter organized and operating in the city of Detroit; subject, however, to the same conditions and limitations. The said company shall run its cars at the average rate of speed of not less than six miles per hour, nor more than ten miles an hour, unless otherwise required by the common council.

SEC. 7. The said company shall have the right to run and operate its street railway cars across Belle Isle Park bridge whenever any other street railway company shall be granted the right
491 so to do, with the same conditions and privileges as shall be accorded to such other company.

SEC. 8. This ordinance shall take effect when the said company shall have filed with the city clerk its written acceptance of the same, and shall have executed and delivered to the city of Detroit a good and sufficient bond in the penal sum of $20,000 to be approved by the common council, and conditioned for the faithful performance of the terms and conditions of this ordinance.

Approved January 3, 1889.

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. G. KRONBERG, *City Clerk.*

EXHIBIT "C 5."

Jour. 1889, p. 15.

An ordinance supplementary to chapter 100 of the Revised Ordinances of 1884 of the City of Detroit, and all amendments and supplements thereto.

Be it ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions, regulations and requirements of chapter 100 of the Revised Ordinances of 1884, consent, permission and authority is hereby given to the Grand River Street Railway Company to construct, operate and maintain a double-track street railway in, along and through Grand River avenue, so called, in the city of Detroit, from its junction with Woodward avenue to the city limits, together with all suitable and necessary turnouts, turn-tables and cross-overs. Also to construct, operate and maintain a single street railway track in, along and through Crawford street in the said city of Detroit, commencing at a point
492 on the track of said Grand River Street Railway Company, and running thence northerly along the center of said Craw-

ford street to the Detroit & Bay City Railroad crossing, together with all suitable and necessary turnouts, turn-tables, curves and switches. Also to construct, operate and maintain a single-track street railway in, along and through Congress street east in said city of Detroit, commencing at a point on the track of the said Grand River Street Railway Company and running thence easterly along said Congress street east to the easterly limits of the city of Detroit, or so far as said Congress street may be opened and until said Congress street east shall be opened to the city limits, or one year thereafter, as hereinbefore provided, the said Grand River Street Railway Company—the permission of the Detroit city railway having first been obtained for such action—shall connect its track at the corner of Mt. Elliott and Congress street east with that of the Detroit city railway, and run its cars over said track of said Detroit city railway along Mt. Elliott and Jefferson avenue east of Mt. Elliott to the boulevard, thence to a point at a convenient distance from the Belle Isle Park bridge to be fixed by the board of public works.

SEC. 2. Said double track on said Grand River avenue shall be laid so that the outer rails of said track shall be equidistant from a line drawn along the center of said street, and in addition to the paving required to be done by said Grand River Street Railway Company, under its present ordinance, it shall lay and maintain the pavement between the double tracks hereby authorized.

SEC. 3. The lines hereby authorized to be constructed on Crawford street and Congress street east shall be operated in connection with the present Grand River Street Railway lines, and as a consideration of the permission hereby granted the said com-
493 pany shall, when filing its acceptance of this ordinance as hereinafter required, file a stipulation or agreement in writing, by the terms of which it shall agree to carry passengers from the westerly termini of its lines on Myrtle street and Grand River avenue and the northerly terminus of its line on Crawford street, or any point on any of its said lines, to any point on its line on Congress street east or to the terminus thereof, for a single fare of five cents for one continuous trip, and from any point on its line on Congress street east in a westerly direction to any point on any one of its said lines on Grand River, Myrtle or Crawford streets; also for a continuous trip from any point on the lines of said railway for a single fare of five cents for one continuous trip; and shall also within sixty days of the date of the acceptance of this ordinance issue and sell tickets at the rate of eight tickets for twenty-five cents, said tickets to be good for transportation over the entire route of said company, or any portion thereof traveled continuously either way, when offered for fare by persons taking passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15 o'clock in the afternoon.

SEC. 4. The lines hereinbefore authorized shall be constructed and in operation within one year from the date of the passage of this ordinance, provided, however, that the railway tracks along and

upon Congress street east, between Mt. Elliott avenue and the city limits, shall be laid, constructed and in use within one year after that portion of Congress street east shall be opened for public use; provided, also, that the said Grand River Street Railway Company shall, within thirty days after the approval of this ordinance by the mayor, file its acceptance thereof in writing, and shall give within the same period of time a bond in the penal sum of $20,000
494 for the faithful performance by it of the terms and conditions of this ordinance.

SEC. 5. The rights conferred and obligations imposed under the terms of this ordinance shall remain in force during the period fixed by the ordinance to which this is supplementary.

SEC. 6. That said company is hereby authorized to run its cars at the rate of speed not exceeding ten miles per hour, and is hereby required to run them at an average speed of not less than six miles per hour, and is also permitted to use in operating its cars, electricity or any other proper or suitable motive power used by any other street railway company now or hereafter organized and operated in the city of Detroit.

Approved January 3, 1889.

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. G. KRONBERG, *City Clerk.*

STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY }
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY. }

Proofs taken in the above-entitled cause on the part of said defendants, before D. Augustus Straker, the circuit court commissioner in and for said county of Wayne, at his office in the city of Detroit, commencing on the 30th day of October, in the year eighteen hundred and ninety-five.

495 Appearances: Mr. Fred. Baker, of counsel for complainant, Mr. Hanchett, Mr. Hatch, Mr. Corliss and Mr. Flowers, of counsel for the defendants.

C. M. BURTON, a witness produced on behalf of the defendants, being first duly sworn by the commissioner to testify the truth, the whole truth and nothing but the truth, and being orally examined by Mr. Corliss, testified as follows:

Q. Your full name is Clarence M. Burton?
A. Yes.
Q. What is your business?
A. Making abstracts of title.
Q. In the city of Detroit?
A. Yes.

Q. And county of Wayne?
A. Yes.
Q. How many years have you been engaged in that?
A. Twenty or twenty-one, pretty near twenty-two.
Q. Very familiar with the location of the highways of the city of Detroit?
A. Yes.
Q. Have you prepared a map showing the lines of street railway in the city of Detroit?
A. Yes.
Q. Is this the map that I hold in my hand, marked Exhibit "B"?
A. Yes.
Q. This is a map originally prepared to accompany the answer of the defendants?
A. Yes.
Q. Filed in this cause?
A. Yes.
Q. I notice a great number of different colors on this map; will you give us a general idea why made so?
496 A. Each color represents a separate ordinance of the city council.
Q. Will you take this map, I should like to ask you a few questions. Can you state what lines were constructed by the old Detroit city railway under the ordinance of 1862?
A. I think the Jefferson Avenue line from Third street to the railroad.
Q. That would be Dequindre street?
A. Yes; the Woodward Avenue line from the intersection of Jefferson avenue to Brady street; Michigan Avenue line from Woodward avenue to Fourth street; and Gratiot Avenue line from Woodward avenue to Russell street. I guess that is all.
Mr. BAKER: That is, originally started.
A. Yes, that is, started.
Q. They were street railway lines in the city of Detroit?
A. Yes.
Q. Can you state when the next street railway line was constructed?
A. If you are going to ask me questions that depend upon dates, I think it would be a good plan if I can have the questions written out and I will hunt up the answers to them and come in here again and testify.

Mr. HANCHETT: Can you give the dates of the different constructions if you have time to refer to them?

A. Yes, I cannot give the dates the tracks were actually laid, but the dates of the ordinances for laying them.
Q. I will ask you with reference—what is that color?
A. That is the Fort Street line.
Q. Running on Fort street from——

A. (Interrupting.) From Twenty-fourth to Elmwood avenue.

497 Q. Along on the east of Woodward avenue on Croghan street?

A. Yes, old Croghan.

Q. Can you state what the boundary line of the city of Detroit was in 1862—is it indicated on this map?

A. Yes.

Q. By what lines?

A. This red line; it runs from Twenty-fourth at the river to the Bay City railroad, now Bay City railroad, very nearly following the line of the railroad until it comes to Dequindre street, the Detroit, Grand Haven & Milwaukee railway; thence southeasterly to the intersection of St. Aubin avenue, and southerly along St. Aubin avenue to Leland street, easterly along Leland street to McDougall avenue, south on McDougall avenue to Gratiot, northeast on Gratiot to Elmwood, and south on Mt. Elliott to the river.

Q. That was the boundary of the city of Detroit in 1862?

A. Yes.

Q. And it remained the boundary of the city how many years thereafter?

A. I think the next one was in 1873.

Q. I show you a map, another map, marked Exhibit "A;" is that map prepared by you?

A. Yes.

Q. When?

A. 1891.

Q. The different colors on the map indicate what?

A. The different acts of the legislature in enlarging the city limits.

Q. And upon each color is the date of the act?

A. Yes.

Q. Enlarging the city?

A. Yes.

498 Q. That only shows the principal streets of the city?

A. That is all.

Q. Without the cross-streets?

A. That is all.

Q. The next enlargement was May 3d, 1875? So that the boundaries of the city from 1862 to 1875 remained the same as you have indicated in this red mark on Exhibit "B"?

A. Yes.

Q. Do you know whether from your investigations of the act and the boundaries as indicated by that map, which we called Ex. "A," that it is correct?

A. Yes, I took a great deal of pains in making that, and I think it is correct.

Mr. CORLISS: We will offer in evidence Ex. "A," showing by proper coloration the extensions of the city limits from time to time.

Q. Does Ex. "A" embrace the boundary of the city at the present time?

A. Not entirely, there has been some new additions made in 1893.

Q. But it is a complete——

A. (Interrupting.) Complete up to 1891.

Q. And Ex. "B" would show extensions of the city limits since?

A. I think it does.

Paper marked Ex. "A."

Q. I will again refer to Ex. "B." Will you state what the dimensions of the city are now as you have investigated and indicated on this map? And the boundaries?

A. How many miles of area?

Q. No, just give us the way the line ran, commencing at the west end?

A. The boundary line of the city on the east commences
499 at the intersection of the west line of Grosse Pointe township with the river, running northerly to Butler road and Center Line avenue, west along Center Line avenue to Charles street, northerly on Charles street to Spring avenue, westerly on Spring avenue to the intersection of Mt. Elliot avenue, thence westerly parallel to the Boulevard to St. Aubin avenue, northerly along St. Aubin avenue to Lester court extended, westerly along Lester court to Hastings, north on Hastings to Woodlawn avenue, westerly on Woodlawn avenue to 200 feet west of Crawford street; southerly on that line parallel with Crawford street to Joy avenue; westerly along Joy avenue to Twelfth street, southerly on Twelfth street to 200 feet north of the Boulevard, and westerly along a line parallel to the Boulevard and 200 feet north of it, following the line of the Boulevard to McGraw avenue, along McGraw avenue projected to Livernois avenue, south on Livernois avenue to Dix road, west on Dix road to Artillery avenue, south on Artillery avenue and on that line projected, through the fort to the river.

Mr. HANCHETT: Is this line which you have last described indicated on the map, Ex. "B," by the external colored lines on the map?

A. Yes.

Q. And it also embraces Belle Isle?

A. Yes.

Q. Which is shown indistinctly on the map?

A. Yes, it is not colored at all.

Q. Now, what is the distance from east to west of the boundaries you have given?

A. I think about seven miles.

Q. And the north and south?

A. Taking the extreme width about five miles, the average is three miles.

Q. I call your attention to the line again referred to before
500 on Fort street running from Mt. Elliott avenue through Croghan street, Randolph, thence southerly to Cadillac square, and through Cadillac square, across Woodward avenue, and

extending westerly on Fort street, can you state when that line was constructed, or about when? Can you state when that Ft. Wayne & Belle Isle Co. was constructed?

Mr. HANCHETT: You mean the street railway?

A. In January, 1865, the ordinance was granted.

Mr. HANCHETT: How soon after the granting of the ordinance was the road constructed?

A. I don't know, I wasn't here. I have no knowledge.

Q. You were here at what time?

A. In 1874.

Q. Was the line constructed then?

A. Yes, but whether entirely throughout, I don't remember.

Q. It has been in operation ever since?

A. Yes.

Q. It is being operated now?

A. Yes.

Q. By the Fort Wayne & Belle Isle Co.?

A. Yes.

Q. Will you indicate on this map what additional streets are now operated by that railroad line, the Fort Wayne & Belle Isle Co., as indicated on this map?

A. The line commences at Woodward avenue and runs along the northerly side of Cadillac square and up Bates street to Fort, easterly on Fort to Baldwin avenue, and in addition to that is a short connection line on Mt. Elliott avenue, between the easterly extremity of the old line and the new line. On the west they have a charter from the township as I suppose, over the old city line west to Clark avenue, down Clark avenue to the River road, and westerly
501 on the River road to the present line of the city. They have a charter from the city over Clark avenue and Fort street west to the city limits.

Q. And they are operating that line?

A. Yes.

Q. At the present time?

A. Yes, those are in the city.

Q. I will call your attention to the Congress & Baker Street line, originally known as the Grand Trunk Junction street railway—do you indicate that on this map?

A. Yes.

Q. State the line of that railway?

A. That extends west from Woodward avenue along Congress street to Seventh, up Seventh to Baker, on Baker to Twenty-fourth, up Twenty-four to Dix, west on Dix to the old city line.

Q. Do you know when that was constructed?

A. I think after I came here. I don't remember.

Q. Do you know the company that constructed it?

A. I think they were called the Grand Trunk Junction Street Railway Co. Mr. Lord and Mr. Carlisle built it.

Q. Was that line that you have just indicated a street railway line

constructed and in operation by this company that you have referred to in 1874 when you came here?

A. Yes, I think it was.

Q. For how many years; was that a horse-car line?

A. Yes.

Q. For how many years was that operated by that company, if you remember, about how many?

A. I cannot give the length of time, they have sold it to the Citizens', I don't remember when.

Q. About how many years after?

A. It must have been several years, I think it was six or eight or ten years.

502 Mr. BAKER: They had sold it prior to November 5th, 1879.

Q. That railroad line is still being operated?

A. Yes.

Q. By what company?

A. By the Citizens'.

Q. Detroit Citizens' Street Railway Company?

A. Yes.

Q. I call your attention to the Grand River—have you indicated on this map the original Grand River Street Railway Co.'s lines?

A. Yes, that ran from the intersection of Jefferson and Woodward avenues up Woodward avenue to Grand River, and up Grand River to the railroad crossing.

Q. What is the color?

A. Yellow, that was granted in 1868.

Q. To what company?

A. To the—I think Mr. Wesson got that, possibly the Grand River Street Railway Co. When I came here it wasn't all laid.

Q. What portion wasn't laid when you came?

A. I think they ran as far as Trumbull avenue, that is all.

Q. Up Grand River?

A. Yes.

Q. But the line down Woodward avenue was laid?

A. Yes.

Q. And in operation?

A. Yes.

Q. And by that company?

A. Yes.

Q. For how many years did that railroad company operate that line?

A. I think they sold out in 1892, or 1891, or 1890.

Mr. HANCHETT: Who has since been operating it?

503 A. The Citizens'.

Q. You mean the Detroit Citizens' Street Railway Co., the complainant in this case?

A. Yes. There has been another company in between—there was another company formed in between, and this company is the third.

Q. That was the Detroit Street Railway Company?

A. I don't remember the name of it.

Q. I notice in connection with this Grand River Avenue line, an extension northwesterly from the railroad crossing over the old line as indicated in yellow; does that indicate the extension to that same company of that franchise?

A. Yes, that was granted in 1888.

Q. I again call your attention to a branch from that line to Myrtle street; will you give the boundaries of that first?

A. That extends from the intersection of Trumbull avenue and Grand River avenue to Myrtle street, along Myrtle street to Twenty-fifth street—Twenty-sixth street, I guess.

Q. Can you tell when that was granted and to whom?

A. That was granted in 1885 to the same company.

Q. And constructed by the same company?

A. Yes, the Grand River, that was the portion they sold out, they sold out in 1890.

Q. I call your attention again to another branch of the Grand River Avenue line on Crawford street?

A. That extends from the intersection of Crawford street and Grand River avenue northerly to the Detroit & Bay City railway on Crawford street.

Q. When was that granted and to whom?

A. That was granted in 1889 to the Grand River Avenue Street Car Company.

Q. And was that constructed by that company?

504 A. Yes.

Q. Put into operation?

A. I think so.

Q. Before it sold out?

A. Yes.

Q. Are those lines now in operation?

A. Yes.

Q. Under what company?

A. Under the Detroit Citizens' Street Railway Co.

Q. Can you state whether the Grand River Avenue street car line constructed the extension that was granted to them from the railroad crossing to the city limits?

A. I don't know who constructed it, or what year.

Q. But it is in operation?

A. Yes.

Q. And has been for a number of years?

A. Yes.

Q. And operated now by the Citizens' Company?

A. Yes.

Q. I call your attention to the Congress Street line extending easterly from Woodward avenue?

A. Yes.

Q. State what franchises—to whom that franchise was granted?

A. That extended along Congress street from the intersection of Woodward avenue to Mt. Elliott, and granted to the Grand River Avenue Street Car Company in January, 1889.

Q. That was constructed?
A. Yes.
Q. Put into operation?
A. Yes, by them.
Q. By that company?
A. Yes.
Q. Who operates that line?
505 A. The Detroit Citizens' Street Railway Co.
Q. I will ask you about what is termed the Western Transit Railway Co. I hardly think you have indicated it on this map; you can state what that is.
A. If I understand right, that is a charter that was granted by the township of Springwells, to join—along Dix avenue to join the Congress & Baker Street car track, and was the first one on which they ran electric cars.
Q. That was the Western Transit Railway Co.?
A. That was the Western Transit Railway Co.
Q. That was constructed by that company?
A. So I understand.
Q. About how many years ago?
A. I don't know, the ordinance or charter was granted by the township and I never saw it, so I don't know what it is.
Q. It was a number of years before the Baker Street line became a part of the Citizens' road?
A. Yes, quite a while.
Q. Is that line in operation now?
A. I believe it is.
Q. Constructed and put in operation by the company that secured the franchise?
A. Yes, and then they sold it out to the Detroit Citizens' Street Railway Company.
Q. It is now operated by that company?
A. Part of their lines.
Q. Inside the city limits?
A. Yes, it is now.
Q. I desire to call your attention to Central Market, Cass Avenue and Third Street Railway Co.; do you remember that company?
A. Yes.
Q. Did it secure a franchise from the city of Detroit for the construction of a line?
506 A. Yes.
Q. When?
A. It has been torn off, the date here. I think Mr. Cox got that.
Q. Refer to page 304 there?
A. That was the ordinance—is dated on the 13th June, 1873.
Q. To whom was that granted?
A. That was granted to the Central Market, Cass Avenue and Third Street railway. The ordinance in the first place provided that—they didn't run these tracks according to the ordinance, and the ordinance was afterwards amended so as to provide for it.

Q. I am asking you to state the tracks that were built by that company?

A. At that time, started at the post-office on Griswold street, ran up Griswold street to State, up State to Cass, up Cass to Ledyard, west on Ledyard to Third, up Third to the street-car barns.

Q. Near the Holden road?

A. Didn't go as far as that, they went up as far as—the barns were located somewhere about Merrick avenue.

Q. That is a distance of how many miles, following the line?

A. Probably two and a half miles.

Q. When was that constructed and put in operation?

A. In 1873.

Q. When was the road built?

A. In 1873.

Q. And put into operation?

A. Yes.

Q. That was a horse-car line?

A. Yes.

Q. How many years did that company operate that line?

507 A. It has been operated ever since until they sold out to the Citizens' Company.

Q. After the securing of an additional franchise, didn't they run down Larned street?

A. Yes, laid down on Sunday; their new franchise allowed them to run a line from the post-office over Larned street to Third, and down Third street to the Michigan Central depot. That was laid, I think, in 1874 or 1875.

Q. There appears to be indicated on this map an extension of that line from about where the car barns are on Third street northerly to Holden road; state whether that was an extension to that company.

A. Yes, it was, but I cannot give you the date of it.

Q. Was it constructed by that company?

A. I don't think it was, I think this was taken and sold on execution before that, and wasn't put down until after this company got it; I think so, I am not sure.

Q. That extension was built by the Citizens' Company after they acquired it?

A. Yes.

Q. That line is in operation at the present time?

Mr. HANCHETT: Does that line include Farmer street?

A. No, that is on the other side of Woodward avenue. They surrendered that part of their charter, and they also had a right to run up Cass avenue, and this runs up both of those.

Q. (Question repeated.) That line is in operation at the present time?

A. Yes.

Q. By the Citizens' Company?

A. By the Citizens' Company.

Q. Do you remember a franchise that was granted on Russell street, from Gratiot avenue northerly?

A. Yes.

Q. When was that granted?

508 A. That was laid—I don't think it is indicated on here, because the track was taken up. I think that was laid before 1874, and must have been laid a year or two before that, probably in 1871.

Q. By a separate corporation?

A. By a separate corporation.

Q. Called the St. Aubin Avenue street railway?

A. Yes, and they took the track up afterwards, that didn't pay and got into financial difficulties.

Q. They obtained a franchise and put up a road and operated it for a number of years?

A. Yes.

Mr. HANCHETT: On what streets?

A. St. Aubin avenue from—it is not indicated here—it started at the intersection of St. Aubin and Gratiot road, and ran up St. Aubin avenue.

Mr. HANCHETT: What distance?

A. I think as far as the junction—the railroad junction—perhaps a mile, a mile and a quarter.

Mr. HANCHETT: Did that terminate at Jefferson avenue?

A. No, it terminated on Gratiot.

Q. Now, I call your attention to the Fort Street line, running east between Brush street and Mt. Elliott.

A. Yes.

Q. To whom was that granted?

A. That was granted to the present company.

Q. To the predecessors, the Detroit street railway?

A. Granted to the old Detroit Street Railway Company.

Q. And constructed by that company?

A. Yes.

Q. And is in operation now by the Citizens' Company?

A. By the Citizens'.

509 Q. I call your attention to the Brush Street line—will you just state that, the line upon which it ran?

A. Brush Street line I suppose technically commences at the intersection of Brush street with Gratiot avenue, and runs north along Brush street to Rowena, east on Rowena to St. Antoine, north on St. Antoine to Farnsworth, east on Farnsworth to Russell, north on Russell to Ferry, east on Ferry to the railroad—Detroit, Grand Haven & Milwaukee railway.

Q. To whom was that franchise granted, and when?

A. That was granted in January in 1888 to the old street car company.

Q. Detroit Railway Co.?

A. Yes, the Detroit Railway Co.

Q. It was constructed by that company?

A. Yes, I think they abandoned a little piece of it, I think that part of it east of Russell street was abandoned, but with the exception of that I think it is run still.

Q. By what company?

A. The complainant in this suit, the present company.
Q. I will ask you about the Highland Park Railway Co.?
A. The Highland Park Railway Co. obtained a franchise to run from the intersection of Woodward avenue and the Detroit & Bay City railroad to the city limits as it was then in 1890.
Q. On Woodward avenue?
A. On Woodward avenue, it ran up to Pallister.
Q. Was that road constructed by the Highland Park Railway Co.?
A. Yes.
Q. It extended into the township on Woodward, didn't it?
A. Yes.
Q. Is that in operation at the present time?
510 A. Yes.
Q. Running from that railroad crossing clear to the city limits?
A. Yes.
Q. By what company?
A. The Detroit Citizens' Street Railway Co.
Q. I will ask you to state whether that map also indicates the line embraced in the original ordinance granted by the city to the Detroit Railway Co., by the light-green color?
A. Oh, yes, that is the Detroit Railway Co.—that is the new company. Those are inked in green—that is the new company.
Q. These lines extend generally across Warren avenue?
A. Warren avenue.
Q. Hastings, Beaubien loop up Fourteenth avenue?
A. They got this change since that, they got another road in there, a loop line, on Mt. Elliott and on Concord avenue and Henry street, Bagg street, Fourteenth avenue, Vinewood avenue.
Q. We will ask you to correct this map up to date. I will give you the ordinance so that you may complete it so that we can have it. With the correction of this map as indicated, it shows the entire street railway lines as constructed and in operation at the present time in the city of Detroit?
A. Yes.
Q. The facts that you have testified to here, Mr. Burton, you have taken from the documentary evidence in your office and the city records?
A. Yes.
Q. So that you know that it is accurate?
A. Yes, as accurate as I can get it.

511 Cross-examination.

By Mr. BAKER:

Q. Mr. Burton, does that map, Ex. "A," represent the site of the city of Detroit when it was first incorporated?
A. Yes.
Q. Under what date?
A. Eighteen hundred and fifteen; the 1802 provision was for the

Northwest Territory and provided for a—it was to be four thousand feet—I don't remember exactly, but that was a town. The 1802 provision was a town, the village was in 1815—the city was in 1815, that was the first provision indicated on that, and the dates given.

Q. That incorporation was an act passed——

A. (Interrupting.) By the governor and judges of Michigan Territory.

Q. Will you state whether or not the original boundaries of the city of Detroit as laid out in 1815 is at the present time the central business portion of the city of Detroit?

A. Yes, it is.

Q. And the city has grown in every direction situated on the river from that original location?

A. Yes.

Q. When was the governor and judges' plan adopted by the governor and judges?

A. 1807.

Q. Weren't the main streets in the city of Detroit laid out on that plan?

A. Yes.

Q. With a center which has been called from that day to this, the Campus Martius?

A. Yes.

Q. Michigan avenue is a main thoroughfare that runs from this business center towards the west——

A. (Interrupting.) Runs to Chicago.

512 Q. And that avenue is, as a matter of fact, much older than the city?

A. Yes.

Q. And Gratiot avenue also runs from the Campus Martius in a northeast——

A. (Interrupting.) Towards Gratiot; they were military roads those two streets.

Q. And long antedate the city of Detroit?

A. Yes.

Q. Grand River avenue is—will you state whether or not that was originally designed to go down to the Campus Martius?

A. I don't think it was, that wasn't the intention in the first place, it is not a military road, and not laid by the military department.

Q. When, from your information, does that road date?

A. It was in existence there at the time, at 1807, the first plan at all was made.

Q. It is shown on the governor and judges' plan?

A. Yes.

Mr. HANCHETT: Is the governor and judges' plan in evidence?

A. I don't think you can find it, it doesn't exist.

Q. Will you not find the governor and judges' plan, or a couple of plans which are all we have of the original governor and judges' plan in volume 5 of American State Papers?

A. Yes.

Q. In a report that was made to Congress——
A. (Interrupting.) In 1830.
Q. Isn't that the only real record there is of it?
A. That is all we have.
Q. Woodward avenue was originally known as Witherell street?
A. No, the upper part was; the lower part was Woodward avenue always.
513 Q. From where?
A. Up as far as the park.
Q. Through the park?
A. Through the park.
Q. North of it, it was originally known as Witherell street?
A. Yes.
Mr. HANCHETT: Do you mean the same as the Campus Martius?
A. No; the Grand Circus.
Q. The Grand Circus is on the governor and judges' plan?
A. Entirely.
Q. When would you say Witherell street was opened?
A. It was laid open on the governor and judges' plan; the governor and judges' plan includes the park lots and the 10,000-acre tract.
Q. Running way through?
A. Running way through.
Q. The 10,000-acre tract is a large tract of land that lies on the north of the present limits of the city of Detroit?
A. Yes, I suppose technically, the park lots form a part of this; it took all of what we know as the 10,000-acre tract and the park lots to make up the 10,000-acre tract.
Q. On both sides of Woodward avenue?
A. Yes.
Q. About how wide?
A. They run about three blocks, 1,500 feet I should judge; they are not uniform.
Q. Can you tell us whether Jefferson avenue is an old highway or not?
514 A. No, it is not. Jefferson avenue wasn't laid open beyond the Biddle house until after 1824. There was a block house stood in there for a great many years.
Q. What was the main river road then in the early history of the city?
A. Atwater street than ran along the line of the river.
Q. About where did that enter the present Jefferson avenue?
A. Not very far above the Bloody Run creek.
Q. That is near Mt. Elliott—just beyond Mt. Elliott avenue?
A. Yes.
Q. Is the Campus Martius at the present time the business center of the city of Detroit?
A. Yes.
Q. The city hall is located there?
A. Yes.
Q. And the principal hotels are near by?

A. And the principal retail stores are near by.

Q. Where is your office?

A. Within 100 feet, or 200 feet of it.

Q. Overlooks it?

A. It is within 100 feet, right across the street from where the old Campus Martius used to be.

Q. Will you state what the general tendency or course of street-car traffic, and travel of foot passengers and teams on the streets of the city of Detroit is with reference to this center?

A. They are towards the city hall, and towards the Campus Martius.

Q. Towards the center of the city?

A. Towards the Campus Martius.

Q. And all of these original street-car lines, the old Detroit city line and the other early lines ran towards this center of the city?

A. Yes, and started from it.

515 Q. You didn't come here until what year?

A. 1874.

Q. Do you know whether or not the Baker & Congress Street line and the Cass Avenue line were originally paying lines or not?

A. No, they didn't pay; they lost on both of them; the folks that built them lost them.

Q. Do you know who built the Fort Street line?

A. I do not, I suppose that E. B. Ward had a hand in it, but whether he did or not I don't know.

Q. E. B. Ward was a very prominent business man in the city of Detroit, years ago?

A. Yes.

Q. One of the most active business men that was ever in the city?

A. Yes.

Q. And he had a palatial residence beyond the railroad on Fort street west?

A. Yes.

Q. Doesn't that, the facts I have called your attention to, recall the fact that the Fort Street road was built by the people who lived along the line--very largely promoted by them?

A. Yes, Mr. Ward was one that did promote it and owned lots of land.

Q. And other people, Mr. Buhl?

A. I think Mr. Swain and other people who were interested in that end of the city; they were large land-owners there and had large houses of their own.

Q. Do you know whether or not the old Detroit city railway refused to build that line when requested to do it by the men who owned property in that part of the city?

A. No.

Q. You have no knowledge of that?

A. No, sir.

516 Q. Do you know under whose auspices the Grand River road originated?

A. I think Mr. Wesson was the prime mover in that.

Q. He was a large real-estate owner here?

A. Yes, my impression is now that a charter was offered this company for that, and they refused to build it.

Q. Do you know whether that enterprise in its inception for the first few years was a paying road or not?

A. No, sir, it was not, for a good many years.

Q. The Grand River road finally passed into the hands and control of Mr. Dailey?

A. Yes.

Q. Was he a real-estate owner on Grand River?

A. I think not, not to any extent.

Q. He became interested afterwards?

A. He put some life into the railroad, and I guess made it pay.

Q. Will you state whether or not the city of Detroit has continuously, almost uninterruptedly increased in population from 1862 to the present time?

A. Yes, there has been a continuous increase of very nearly ten per cent. a year in population.

Q. Have periods of hard times had any susceptible effect on the increase of population?

A. No, sir, I don't think they have, not in the long run; it might have for a short time, but picked up with renewed energy. It has very nearly doubled every decennial census, every ten years.

Mr. HATCH: Its rate of increase from 1890 to 1894 wasn't increased?

A. We had 205,000 in 1890 and increased to 234,000 in four years.

Mr. HATCH: About eight thousand a year?

A. Eight thousand; we had 69,000 in 1870 and we had
517 116,000 in 1880; we had 205,000 in 1890 and 234,000 in 1894.

Q. From your knowledge of a city, isn't it necessary in order to accommodate the travel in the city, the street traffic such as that of the street railway, should go towards the center of the city?

A. Yes, certainly, I believe that is what they are trying.

Q. Can you tell us anything about the real-estate values?

A. I don't know anything about values of real estate at all.

Q. From your abstract business?

A. Never pay any attention to value, don't know anything about it.

Q. You could not tell us what property on Woodward avenue between just above the Grand Circus, from the Grand Circus to just above the Campus Martius; between there and Grand Circus was worth in 1862?

A. Oh, no.

Q. Do you know what it is worth now?

A. It is worth anywhere from $1,600 a foot at the Grand Circus to $4,000 at the Campus Martius.

Q. Would that many hundreds cover it in 1862?

A. Yes, more too; we sold the northwest corner of Clifford and Woodward avenue for $300 a foot in 1878, and it is worth $1,500; it is worth six times as much.

Q. Originally in this city the retail part was below the Campus Martius on Woodward avenue?

A. Yes, between that and the river.

Q. But now it has grown up the avenue between the Campus Martius and Grand Circus?

A. Yes, almost exclusively.

Examined by Mr. HANCHETT:

Q. Where did you say originally the retail trade was?

518 A. Between the Campus Martius and the river; it is now moving up above the Campus Martius from down below.

Q. Then if it was between the Campus Martius and the river, the center of trade was between the Campus Martius and the river?

A. Yes.

Q. Didn't the retail trade also extend up and down Jefferson avenue?

A. Yes, I think for a little ways and yet I don't know that you could call—I don't know of any retail stores down on Jefferson avenue, it has been dead there for twenty years, there on Jefferson avenue.

Q. I am inquiring now, going back to the time when you say the trade was between the Campus Martius and the river on Woodward avenue?

A. Yes.

Q. Go back to 1860, weren't there stores on both sides of Jefferson avenue, covering the street from the Biddle house to the Michigan Exchange?

A. Yes.

Q. Didn't they also extend onward beyond the Michigan Exchange towards the Michigan Central depot?

A. Yes.

Q. Jefferson avenue then was occupied with stores?

A. As far up as the Biddle house; from the Michigan Central depot to the Biddle house.

Q. That would be equally true from the Campus Martius to the river, down Woodward avenue, wouldn't it?

A. Pretty nearly about the same; I don't think there is much difference.

Q. Then the center of business back in those days, say in 1862, was on Woodward and Jefferson?

A. Yes, at that intersection.

Q. Between the Campus Martius and the river?

519 A. Yes.

Q. But that the center of trade has since then moved up so as to include the Campus Martius and go up Woodward avenue beyond it?

A. Yes, until there was street car companies here; I think Jefferson avenue was the street before the advent of street cars; of course, they didn't come here until 1862.

Q. When was the street railroad first built on Jefferson avenue?

A. Either 1862 or 1863; I think 1862.

Q. That didn't touch Campus Martius at all, did it?

A. No, it was Jefferson.

Q. There was a street railroad on that street before any running to the Campus Martius from any direction?

A. That is where the first road was run, there.

Q. How long afterwards was the street railroad built on Woodward avenue?

A. I don't know that, but other charters were granted at the same time, and I suppose they were very nearly together; I wasn't here.

Q. You can't tell about the space of time?

A. No.

Q. Do you know anything about the order of the road as originally built up, except as matter of hearsay?

A. Oh, no, not at all. I never owned any stock in them.

Q. Or had anything to do with the management?

A. No.

Q. In answering Mr. Baker on that subject, you simply gave answers as you get it from reports?

A. One road I think I had, the road that was taken up; there we had some claims against the road, forced the claims through, that was the road taken up.

Q. The St. Aubin avenue?

A. Yes.

Q. The others you had nothing to do with?

520 A. Nothing to do with it.

Q. Have you had anything to do with street railroad management at all?

A. Never had.

Q. None whatever? You don't know, then, as a matter of fact, whether the same road will fail in the hands of one management and prosper in the hands of another?

A. I don't know, I am not conversant with it.

Q. You answered Mr. Baker that street railroad lines should go to the center of a city in order to accommodate the public need; do you understand that there is any more need of street railroads going to the center of this city to accommodate public needs than it is for them to go to the center of any other city to accommodate the public needs of such cities?

A. No, sir, the same thing, I suppose.

Q. Not all travel by any means of the city of Detroit goes to the business center, does it?

A. No, not all of it, that is quite evident from the cross-town roads, because they appear to be pretty well patronized; while I should think a good big proportion of it goes directly to the heart of the city, the facts are here.

Q. It is because a good proportion of the people have occasion to do business out of the business center?

A. That is right; I suppose if they were all employed at the car works, then the car works would be the center.

Q. Then, as a matter of fact, people simply go on street railroads where their business and occasion for travel call them?

A. Yes.

Q. Whether it is to the various railroad depots or to the factories, shops or other business places?

A. Yes.

521 Q. In the summer season, do you know whether, as a matter of fact, there is an immense travel that goes to the public parks, or park?

A. Yes, a large travel.

Q. For that purpose they go away from the center of the city?

A. Yes, they go to the parks; that in this case is away from it, if it was Belle Isle park. That is where the most of them go.

Q. Your Grand Circus park is how far from the Campus Martius?

A. A quarter of a mile; I don't think that is much in demand. A great many of them go right to the heart of the city to get the ferries to go to the park.

Q. Which park.

A. Belle Isle park; and even to go to the Campus Martius and Grand Circus they would have to go to the heart of the city to get there.

Q. What?

A. The Grand Circus.

Q. That is considerably above the Campus Martius?

A. It is a quarter of a mile above, and still it is near the center.

Q. Woodward avenue passes through it?

A. Woodward avenue passes through it.

Q. Aside from a few main streets which you have mentioned in answer to Mr. Baker, there is an immense number of streets in the city of Detroit, which streets do not go to the center of the city, aren't there?

A. Yes.

Q. Do you know from any personal observation of your own, whether the street roads that are now being operated by the Detroit railway accommodate a great number of the citizens of the city?

522 A. Apparently they do. I see the cars frequently and ride on them frequently, and they all seem to be pretty well filled.

Q. In whatever parts of the city you see the cars in the city in operation you see them largely patronized?

A. Yes.

Q. Do you know the section called the Milwaukee junction, Detroit & Milwaukee junction?

A. Yes.

Q. How far from the Campus Martius is that?

A. It is three miles: it would be three miles or four miles anyway you could reach it, three miles north and a mile east.

Q. Is that a large manufacturing center?

A. Yes.

Q. A very large population employed there?

A. Yes.

Q. Do you know whether the lines of the Detroit railway accommodate that center?

A. They have one line running to it, Brush line.

Mr. BAKER: You mean the Detroit Citizens'.

Q. The present Detroit railway?

A. They have one line, the Oakland line.

Q. Does the Detroit Citizens' Co. have a line running also?

A. Yes.

Q. How near together are those two lines?

A. They are within two blocks at one point, and four blocks at another; they cross each other.

Q. I mean the territory.

A. It is all thickly populated.

Q. A manufacturing district?

A. Where the Detroit railway line is there was no street railway accommodation before.

Q. Does not the Detroit railway as now constructed accom-
523 modate a large population there that were not provided for by street railway accommodations before?

A. There were no street railway accommodations there before at all; a good many points the same way.

Examined by Mr. CORLISS:

Q. Isn't it also true that their line on Fourteenth avenue covers an entirely new territory that are now provided for?

A. Yes.

Q. And the Cross Town and Warren Avenue line?

A. There was no cross-town line before at all.

Q. This has been a crying demand of the people for a long time, hasn't it?

A. I don't know, I didn't cry for it. I presume some of them did, or else walked; they don't now.

Q. Haven't you known that it has been desired by the people for a long time?

A. Yes.

Q. Fills a long-felt want, isn't that true, the line constructed by the Detroit railway through the city?

A. I think they have taken a part of the territory that had no accommodations before, to a great extent.

Q. And have not come directly in competition with the old lines?

A. Not over these lines they have not.

Q. Will you state whether there was any way for citizens living in—we will say the line of Warren avenue, for them to reach Belle Isle park, except by walking a long distance and perhaps traveling two or three miles out of their way?

A. Not any street car; there was no way to get there; they had to go down, if they could succeed in getting to the city they would have to take another street car to go east.

Q. Requiring double fares?

524 A. Yes.

Q. Or else the ferry lines?

A. Yes.

Q. Since the construction of that road they have a through line for one fare?

A. A through line; oh, yes.

Q. That is one on Warren avenue; and Sherman and Catherine street?

A. Yes.

Q. Prior to the construction of the Detroit railway tracks was there any way for the citizens to reach the Mt. Elliott cemetery except to walk or drive?

A. No; over a large tract of territory.

Q. Had to go from Champlain street a half mile or better?

A. Yes.

Q. In your cross-examination you stated that you thought that the original franchise of the Grand River Street car line was offered to the old Citizens' line?

A. I think it was.

Q. Do you know anything about it?

A. No; I could not tell you now, that was my impression.

Q. Do you remember Mr. Mansfield?

A. Yes.

Q. You don't remember of his petitioning for a franchise?

A. No.

Q. He was instrumental in obtaining the running of the road afterwards?

A. I think he was.

Q. He was the principal man interested with Mr. Wesson towards the beginning of the work?

A. I think Mr. Crane and Mr. Wesson were interested in putting up money because they owned lots of land up there.

525 Q. Whether offered to the City railroad you don't know of your own knowledge?

A. No.

Q. Isn't that true also with reference to whether the Grand River Avenue was a profitable investment or not?

A. I always understood—no! I don't know anything about it.

Q. It has always continued in operation?

A. Yes.

Q. Was a very profitable institution when sold to the Citizens' Railroad Co.?

A. You mean profitable in the amount of money it got out of it, or in its returns?

Q. Both, in 1890?

A. The supposition was that they got a pretty good price for it, but I don't know anything about it.

Q. It was a successfully managed road?

A. Very well managed, I understood.

Examined by Mr. BAKER:

Q. You say you haven't personal knowledge of some of the things you have testified about, isn't it common knowledge here in the city of Detroit, that these lines of which you have spoken were not paying investments to start with?

A. That has always been reported, I think some of the men that built these lines did not died wealthy, like Mr. Cox, Mr. Lord and Mr. Carlisle still living.

Q. Mr. Carlisle.

A. He was one of the builders of the Baker Street line.

Q. You have spoken of the Fourteenth Avenue line of the present Detroit railway, which starts up on the Boulevard and goes down to Grand River, and then runs almost to Michigan avenue, and then east on Locust street——

526 A. (Interrupting.) Yes, to Clifford.

Q. And down Clifford to State street. I desire to ask you this question, whether it would not be a great deal more direct for people upon that street to go down Fourteenth avenue to Grand River, and then down Grand River to the Campus Martius?

A. Yes.

Q. And for people who live south of Grand River to go down Fourteenth avenue to Michigan avenue, and then down Michigan avenue?

A. Yes.

Q. It would be a great deal more direct?

A. Yes.

Q. That is the natural course that anybody would take if going in a buggy or on foot?

A. I should think so.

Q. Here is the Hastings Street line which goes down the whole length of Hastings street right to Gratiot avenue, and then goes west on Adams avenue and on a zigzag course down to State street, wouldn't it be a geat deal more convenient for them to go right down to Gratiot avenue to the Campus Martius?

A. Yes, I suppose they would like to run that way if they could.

Q. Here is the Sherman Street line and the Catherine Street line, evidently a loop line; wouldn't that traffic be better accommodated if the line continued right down Gratiot avenue today?

A. Yes.

Q. And what you say as to the Fourteenth Avenue line would be also true as to the Vinewood Avenue line?

A. Yes, to anybody that wants to go to the city.

Q. The Woodward Avenue line, you stop at Pallister avenue, on this map; as a matter of fact, you go to the city limits?

527 A. They have a charter from the township, we didn't know the date of it.

Mr. CORLISS: That will be completed.

Q. That goes out to Highland park and the Log Cabin park?

A. It does now.

Q. And a road from there to Oakland county is about being constructed?

A. So I understand.

Q. On Gratiot there is a street railway line that runs from that up Gratiot avenue to the city of Mt. Clemens?

A. Yes, I believe they stop there, and this is run without a charter.

Q. As a matter of fact the railroad communications from the foot of Woodward avenue and the Campus Martius is direct through to Mt. Clemens, about 20 miles?

A. Yes.

Q. And the Jefferson Avenue line runs about ten miles, out to Grosse Pointe?

A. Yes.

Q. Lines out Grand River and Michigan avenue are talked about?

A. They run as far as they are needed, I guess.

Mr. HATCH: They are in the air.

Q. The Fort Street line——

A. (Interrupting.) Runs to Trenton.

Q. All the way to Trenton?

A. Yes.

Q. How many miles?

A. Twenty-five miles, I guess.

Q. Twenty-five miles?

A. I should think so, I don't know how far to Trenton, going west.

Q. So that this entire street railway system of the city of Detroit will converge near the center of the city?

528 A. Yes, both lines do it, all the lines do it.

Q. The Detroit lines go down, after a fashion, to the center of the city?

A. Yes.

Q. With the single exception of the cross-town line?

A. Yes.

Q. Is there a line that runs out Mack avenue, that goes into Gratiot?

A. Yes.

Q. How far out does it go?

A. It did run clear up to Grosse Pointe, they just got their charter for that the other day; they were laying tracks there last Sunday.

Q. Do you remember when the Russell Street line was taken up?

A. I think somewhere about 1878.

Q. What was it taken up for?

A. It didn't pay and somebody got an execution against it and levied against it, and took up the track and sold it.

Examined by Mr. FLOWERS:

Q. I suppose what you mean to say is that those persons living

along the line of the Citizens' street railway are accommodated by that line, and those living along the line of the Detroit railway are accommodated by that?

A. Yes.

Q. And both parties are accommodated better by the lines as now constructed?

A. Certainly, they don't have to walk so far to get a street car.

Q. And that the Citizens' street railway as laid out, taking the main thoroughfares, do not and never would accommodate the people of Detroit in the way they are accommodated now by the Detroit railway?

529 A. Not without they put on some new lines.

Q. I mean as they are laid out?

A. Yes.

Q. If they put down the same lines as the Detroit railway, they would have as good an accommodation?

A. Yes.

Q. Except as to prices?

A. They probably could have done better because they would have run, for instance (pointing to map), other lines down here; that line down here and then into the city; they would not have had to have gone through here.

Q. You mean down Gratiot?

A. Down to Gratiot, and then down Gratiot to State.

Examined by Mr. BAKER:

Q. Lines that go into these main thoroughfares and again on over there to State would be the best?

A. It would have been shorter.

Q. That would have accommodated the public the best?

A. I think so, if one company owned both of these lines, they would have run them, I think.

Examined by Mr. FLOWERS:

Q. You don't mean to say that the people living upon Adams avenue, between Grand Circus park and Hastings street, could have been accommodated better by a line on Gratiot?

A. No, I don't mean that, I mean a man living on Hastings street could have got to the heart of the city quicker if the line ran straight down Hastings to Gratiot and then down Gratiot to the center of the city than he would going by the present line of the road.

Q. I suppose a man living on the corner of Hastings street and Palmer wanted to go to Warren avenue west, could he have been better accommodated going down Gratiot?

530 A. No.

Examined by Mr. BAKER:

Q. Even with the lines as now laid out the public would be accommodated a great deal better if there was a system of universal transfer?

A. Yes.

Q. Many people living on this street, Warren avenue, would be accommodated if they could ride on the Detroit railway to Woodward avenue, and then come down?

A. Yes.

Q. And isn't it a fact, in your judgment, that most people who desire to travel on that Warren Avenue line would prefer to go down Woodward avenue?

A. Yes.

Q. And some would go down Woodward avenue and then cross to the other end of the city?

A. There are a great many people going on this line that work at the shops.

Q. Other people living in the eastern and western end of the city go out there to work?

A. Yes.

Q. And people living along the line would have better accommodation to the heart of the city?

A. Yes.

Mr. CORLISS: Don't you know the reason is that the citizens won't grant it?

A. I don't know, I am not posted.

(Signed) CLARENCE M. BURTON.

Subscribed and sworn to before me, this 11th day of November, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

PAUL GIES, a witness produced on behalf of the defendants, who being first duly sworn by the commissioner and being
531 orally examined by Mr. Corliss, solicitor for the defendants, testified as follows:

Q. You live in Detroit?

A. Yes.

Q. How many years have you lived in Detroit?

A. I have lived 63 years in Detroit.

Q. Have you ever held any official position?

A. I was alderman, and county treasurer, and I was representative and State senator.

Q. How many years were you in all, alderman?

A. I think six or eight years—six sure.

Q. Do you remember the fact that you were alderman in 1864, 1865, 1866 and 1867?

A. Yes.

Q. You became a senator in 1868, didn't you?

A. Yes, 1868.

Q. Were you one of the aldermen when a franchise was granted to the Fort Street Railway Company, called then the Fort Wayne & Elmwood Avenue Railway Company?

A. Yes.

Q. Do you remember who petitioned for that franchise, whether it was Mr. Buhl and others?

A. I believe it was Mr. Buhl and others, yes.

Q. I call your attention to the proceedings of the common council of 1864, page 172; to refresh your recollection, I call your attention to the petition filed under date of October 4th, 1864, F. Buhl and ten others asking that an ordinance be passed constituting them, and such persons as they shall designate a company for constructing and maintaining a railway and running cars upon the same by horse-power, extending from Woodward avenue down Fort street to the west line of the, etc., which was referred to a committee consisting of Aldermen Gies, Bond and Seeley. Do you remember of that fact?

532 A. Yes.

Q. Were you a member of that committee?

A. Yes, I was chairman.

Q. Do you remember you made a report upon that?

A. Yes, we did.

Q. In favor of the petition?

A. Yes, sir.

Q. And afterwards—look on page 204 and see if that is the report made by your committee at that time?

A. Yes, that is the report made.

Q. Upon that petition?

A. Yes.

Q. Was the franchise afterwards granted?

A. I believe it was.

Q. Do you remember that that ordinance was granted over the mayor's veto?

A. Yes.

Q. Will you state whether—over what streets, if you recollect that line extended, was it over Fort street west?

A. That I could not remember, all the streets.

Q. Do you remember any of them—Croghan street?

A. Croghan one.

Q. How far out Croghan street? East on Croghan?

A. It was on Croghan street.

Q. Running up Randolph street to Croghan, through Cadillac square on, and out Croghan street on east?

A. Yes.

Q. To Elmwood cemetery?

A. Yes.

Q. When was that road put into operation after the franchise was granted?

A. That I could not say certain.

Q. Done within a year or such a matter?

A. It was the intention that they should do it.

Q. Do you know how soon afterwards it was built?

533 A. That I can't say certain.

Q. Did they build it?

A. They built it.

Q. And put it into operation?

A. Yes.

Q. And the parties to whom the franchise was granted constructed it to Fort Wayne and Elmwood Cemetery Company, running on Fort street?

A. That I would not say certain whether they did construct it, I think they did.

Q. It was constructed under that franchise?

A. Yes, it was constructed under that franchise.

Q. Put into operation?

A. Yes.

Q. And been operated ever since?

A. Yes.

Q. Were you also alderman in 1865?

A. Yes.

Q. Do you remember offering a resolution in the common council with reference to a line on Grand River avenue?

A. I believe I did; I know the committee when we made that instructed the chairman to offer the proper resolution necessary. I believe, if I am not mistaken, Mr. Baker was city attorney then.

Q. Do you remember offering this resolution—I call your attention to page 4 of the Journal of the Council Proceedings in 1865. "By Alderman Gies, resolution that the city counselor and attorney be, and they are hereby directed to report to the common council at its next meeting whether the city street railway company has complied with the ordinance in regard to the completion of their several routes. Adopted." Do you recall the fact that you made inquiry with reference to that?

A. Yes.

534 Q. Will you state whether the Detroit city railway at that time was willing to construct a street railway on Grand River avenue?

A. That was asked; I believe they consented to it.

Q. Afterwards they did not?

A. Yes.

Q. That was granted to whom; do you remember who that was granted to—to Mr. Mansfield?

A. Mr. Mansfield was one of them, for he appeared before the committee.

Q. How soon after that was the Grand River Avenue line constructed?

A. I could not say. I do not remember any more the exact date.

Q. Was it constructed under the franchise that was granted or the line built, the Grand River Avenue?

A. Nothing built, I don't think, right off; we had some rumpus afterwards.

Q. How many years afterwards?

A. I don't know.

Q. Was it built at all?

A. I could not remember certain; I know we had meetings and notified him to do it and had quite a trouble getting him to do it.

Q. Was the Grand River Avenue street line built?

A. No.

Q. Not by the Citizens' road?

A. No.

Q. Was it completed by the other company, the Grand River Avenue, the Mansfield Company?

A. I think it was.

Q. I call your attention to the Gratiot Avenue line beyond the railroad. Will you state whether any effort was made to get that line extended from the Detroit City Railway Co.

535 A. Yes, sir; they didn't do it.

Q. Tell us what was the difficulty.

A. They were asked by petition of the citizens that they should extend it and go on and make an electric.

Q. In response to the property-holders did you call on the company to seek an extension?

A. Yes.

Q. Why was the meeting called?

A. They would not give us any direct answer hardly and once, I don't know whether it was the president or not, a man, he said it would not pay up there.

Q. That was the reason he would not build it out there?

A. Yes, it would not pay up there.

Q. You were also a member of the common council in 1882 and 1883, weren't you, while I was city attorney?

A. Yes.

Q. You were an alderman at that time?

A. Yes.

Q. Were you an alderman when another street-car line was built in the city?

A. I don't know.

Q. The Cass Avenue line?

A. No, sir.

Q. At the time the Fort Street Road franchise was granted did the Detroit city railway claim they had a right to build a line on Croghan street, or any of those streets upon which that line was going?

A. I could not say positive, I don't remember, I would have to think it over. I know there was some trouble about that Fort Street Railway Co.; they couldn't agree very well with the company, some trouble between them.

Q. I ask you if the Detroit city railway objected to the common council giving to other people a right to build a line.

536 A. Yes.

Q. They did object?

A. They said they had the right; one man said, if I remember right, he said they had a right; and I know Mr. Sheeley said, "We have a right and not you."

Q. That was on the Fort Street line?

A. Yes.

Q. And they went on and granted the franchise?
A. Yes, sir.

Cross-examination.

By Mr. BAKER:

Q. You say you have lived here sixty-three years?
A. Yes, sir.
Q. About how old are you?
A. I will be 69 on the 15th of next month, or the 16th of the month.
Q. F. Buhl, who is mentioned in this petition you have been shown, was a wealthy gentleman who lived on West Fort street?
A. Yes, Western Fort street.
Q. And the people who appeared before the committee with him were some wealthy men who lived in that vicinity?
A. People living in that end of the town.
Q. Eber B. Ward?
A. Yes.
Q. And Mr. Swain?
A. That I don't know.
Q. Did you know him?
A. I have heard the name, but I don't remember certain. I knew Mr. Buhl and Mr. Ward personally.
Q. That road was promoted and built by those property-owners, wasn't it?
537 A. That I couldn't say certain, for I never looked into the matter.
Q. All they asked was to have a franchise granted to them?
A. They asked us to give a franchise.
Q. You say they had some trouble with the old city railway about it.
A. There was something; they could not agree some way or other.
Q. Did the property-owners want the Detroit city railway to build that road?
A. That I could not say; the petition will tell that.
Q. Don't you remember now that the property-owners out there wanted the Detroit city railway to build it, but the city railway would not do it; stated it would not pay. What is your recollection about that?
A. I know some objected and some were in favor of it, and there was so much different talk about it.
Q. But the Grand River Avenue; wasn't that promoted by Mr. Mansfield; you remember him, don't you?
A. Yes.
Q. The people who lived out there wanted a railroad, wasn't that the way it started?
A. They petitioned for it, the people wanted it done, but the company didn't seem to want to do it.
P Q. They didn't want to build it?
A. No.

Q. Didn't the company claim they didn't want to build it because it wouldn't pay?

A. Yes.

Q. But the property-owners induced the common council to grant this franchise?

A. Yes.

Q. And the roads were built?

A. Not while I was there.

538 Q. It was subsequently built?

A. Yes.

Q. Do you remember when the Congress Street road and the Cass Avenue roads were built?

A. No, I wasn't in the common council.

Q. But as a citizen you would hear when they were built?

A. Yes, I remember when they were built.

Q. Don't you remember that all those roads at first didn't pay for a good many years, little traffic on them?

A. I had no stock in it and only know what people said; one day they talked one way and the next day they talked another way.

Q. But wasn't it common knowledge, a notorious fact, that these roads did not pay at first?

A. That was what they said. I don't know anything about it.

Q. That was what the company told you when you wanted them to run it out in the country, on Gratiot avenue?

A. It wasn't country, it was city limits.

Q. It was in the city limits, but not many people out there?

A. The Tenth ward was city limits.

Q. There wasn't many people there?

A. No.

Q. You represented the Tenth ward, did you?

A. I did, sir.

Q. You were anxious to get a railroad for your people?

A. Yes.

Q. And the company would not build it?

A. That was what they said.

Q. They didn't build it when you wanted them to?

A. No, they kept putting it back, that is all.

539 Q. Finally it was built?

A. It took some time before it was built; they claimed, the street car company, that they could not get the land of the property-owners that owned the land; that was Dubois, Chene and St. Aubin; them people was opposed, they would not grant anything for their benefit, because they was afeared it was going to ruin their property; that was the reason of the trouble; that was the reason that people up there didn't get what they ought to get.

By Mr. CORLISS: They wanted a bonus to go up there?

A. Yes.

Q. Pay so much money to build a line?

A. Yes.

(Signed) PAUL GIES.

Subscribed and sworn to before me this 11th day of November, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner.

OCTOBER 31, 1895.

Appearances: Mr. Hanchett, Mr. Hatch, Mr. Corliss, counsel for defendant; Mr. Baker, of counsel for complainant.

Mr. CORLISS: It is admitted by counsel for complainant that franchises were granted to corporations known as the Grand Trunk Junction street railway; the Central Market, Cass Avenue & Third Street Railway Company. That lines were constructed upon the streets mentioned in said ordinances by said corporations respectively in accordance with the several grants of the common council of the city of Detroit. That after said lines had been constructed and operated for a number of years by said corporations, the rights and property of said corporations were transferred to the De-
540 troit city railway and afterwards acquired by the complainant in this cause, and that said lines are now being operated by complainant.

Mr. BAKER: And said corporations are the same corporations as are mentioned in sec. 3 of the ordinance of November 14th, 1879; and said corporations filed written acceptances with the city clerk of the city of Detroit of said ordinance of November 14th, 1879, as provided and required by sec. 6 of said ordinance.

Mr. CORLISS: It is further admitted by counsel that an ordinance was granted to the Grand River Avenue Street Railway Company for the construction and operation of the street-car line on Grand River avenue and Woodward avenue from Grand River avenue to Jefferson on Woodward avenue, and the same was constructed and operated for upwards of twelve years, and the complainant in this cause now own- by purchase the rights held by said original corporation and operates said line.

Mr. BAKER: And purchased it at about the time of incorporation.

Mr. CORLISS: We will offer in evidence the original ordinance granted by the common council of the city of Detroit and approved by the mayor December 4th, 1894.

Also an ordinance granted to The Detroit Railway, defendant, and approved April 9th, 1895.

Also an ordinance granted to defendant, The Detroit Railway, and approved June 4th, 1895.

Also an ordinance to the same defendant corporation, and approved August 13, 1895.

Also an ordinance granted by the common council of the city of Detroit to the same corporation, and approved October 8th, 1895; copies of which are hereto attached and marked Exhibits 1, 2, 3, 4, and 5 respectively.

CHARLES R. FORSTER, a witness produced on behalf of the
541 defendants, who, being first duly sworn by the commissioner, and being orally examined by Mr. Corliss, testified as follows:

Q. You are the city clerk of the city of Detroit?
A. Yes.
Q. Have been such for the past four years, thereabouts?
A. Yes, thereabouts.
Q. Will you state whether acceptances by The Detroit Railway, defendant, were filed in the city clerk's office of ordinances Exhibits 1, 2, 3, 4, and 5 in accordance with the terms of the ordinances?
A. Yes.
Q. Have you the acceptance of the ordinance approved August 13, 1895?
A. Yes.
Q. Running to the Detroit railway?
A. Yes.
Q. Will you produce it?
A. Yes.

Mr. CORLISS: We offer that in evidence, that is the acceptance of the Detroit railway, and is marked Exhibit "6."

Q. Have you also the acceptance of that ordinance approved August 13th, granted to the Detroit railway, executed by the complainant, The Detroit Citizens' Street Railway Company?
A. Yes.
Q. Have you the original in your hand?
A. Yes.

Mr. CORLISS: I offer that in evidence and ask that a copy of it may be marked Exhibit "7."

Q. Have you the written acceptance of the Detroit railway and the Detroit Citizens' Street Railway Co. of the ordinance granted by the common council to the Detroit railway and approved October 8th, 1895?

A. This is the Citizens' street railway I have.
542 Q. And the acceptance of the Citizens' street railway of that ordinance?
A. Yes.

Mr. CORLISS: I offer that in evidence and ask that a copy be marked Exhibit "8."

Q. The acceptance of the Detroit railway of the same ordinance?
A. Yes.
Q. This is the original document?
A. Yes.

Mr. CORLISS: A copy of which is submitted and offered in evidence, marked Exhibit "9."

Mr. HANCHETT: Copies of which are hereto annexed and marked exhibits. Counsel consent that copies be annexed instead of originals.

Mr. BAKER: No objection.

Q. These exhibits that you have just testified to bear the indorsement of yourself, or your clerk, or deputy, showing the time when they were filed respectively in your office, don't they?

A. Yes.

Q. Give the date of the first exhibit, "6."

A. Filed August 16th, 1895.

Q. Now, take Exhibit "7."

A. Exhibit "7" was filed August 15th, 1895.

Q. Now, Exhibit "8."

A. Exhibit "8" was filed October 12th, 1895; Exhibit "9" was filed October 9, 1895.

Q. I call your attention to the volumes lying upon the table before you and ask you to state if they are the public bound volumes of the common council proceedings for the years mentioned.

A. Yes.

Q. From 1860 to 1890?

A. Yes.

543 Q. They are indicated on the back of the volumes?

A. Yes.

Mr. CORLISS: I offer in evidence an ordinance granted to the Detroit city railway, approved August 19, 1863, and shown on page 150 of the Journal Proceedings of the Common Council of 1863, a copy of which is hereto annexed and marked Exhibit "10."

I offer in evidence communication of Mayor K. C. Barker of the city of Detroit vetoing an ordinance granted to the Detroit city railway, wherein it was attempted to extend the time for the construction of the track on Fort street west, embraced in the original ordinance of 1862, bearing date September 27, 1864, as shown on page 169 of the Common Council Proceedings of 1864, a copy of which is hereto annexed and marked Exhibit "11."

I offer in evidence a memorandum showing a petition of F. Buhl and ten others, asking that an ordinance be passed constituting them, or such persons as they should designate as a company for the construction and maintenance of a railroad on Fort street, extending from Woodward avenue, under date October 4, 1864; found on page 172 of the Common Council Proceedings of 1864, a copy of which is hereto attached and marked Exhibit "2."

I offer in evidence the report of the committee to whom was referred the petition of Mr. Buhl and others above referred to, under date of November 29, 1864; found on page 104 of the Common Council Proceedings of 1864, a copy of which is hereto attached and maked Exhibit "13."

I offer in evidence communication of the mayor vetoing the ordinance above referred to, together with a communication of a solicitor for the petitioners and the vote of the common council showing the passage of the ordinance over the mayor's veto, under
544 date January 31, 1865, found on pages 236 and 237 of the Council Proceedings of 1864, a copy of which is hereto attached.

I offer in evidence the ordinance granted to Mr. Buhl and others for a street-car line on Fort street and other streets, passed over the mayor's veto January 31, 1865, found on pages 266 and 267, 63d and 64th volume of Proceedings of the Year 1865; a copy of which is hereto attached marked Exhibit "15."

I offer in evidence a resolution adopted by the common council April 14, 1865, proposed by Ald. Gies, asking for the opinion of the city counselor with reference to the compliance of the city railway with their ordinance in the construction of their several routes, found on page 4 of the Common Council Proceedings of 1865 and 1866; a copy of which is hereto attached and marked Exhibit "16."

I offer in evidence the reply of the city counselor and city attorney to the resolution above referred to, found on page 6, under date April 11, 1865, of the Council Proceedings of 1865 and 1866, a copy of which is hereto attached and marked Exhibit "17."

I offer in evidence resolution offered by Ald. Gallagher and adopted by the common council on May 16, 1865, requesting the city counselor to give to the common council his opinion as to whether the Detroit City Railway Company are entitled to run their cars on any of the streets where railroads were not then constructed, found on page 41 of the Council Proceedings of 1865 and 1866, a copy of which is hereto attached and marked Exhibit "18."

I offer in evidence the reply of the city counselor to the resolution of Ald. Gallagher, presented to the common council May 23d, 1865, and accepted by the council on that date as shown on
545 page 43 of the Council Proceedings of 1865 and '66, a copy of which is hereto attached, marked Exhibit "19."

I offer in evidence the resolution of Ald. Purcell adopted by the common council on May 23rd, 1865, found on page 46 of the Council Proceedings of 1865 and 1866, asking the city counselor and city attorney to report to the common council whether the failure of the Detroit City Railway Company to build a road on Grand River avenue within the time specified by their charter gives the council authority to grant to another company power to build and operate a road on said street and on Woodward avenue from Grand River avenue to Jefferson avenue, a copy of which is hereto attached, and marked Exhibit "20."

I offer in evidence the answer of the city counselor to the foregoing resolution, bearing date June 6, 1865, found on page 60 of the Council Proceedings of 1865 and 1866, a copy of which is hereto attached and marked Exhibit "21."

I offer in evidence a resolution offered by Ald. Gallagher and adopted by the common council on the 8th day of June, 1865, wherein the common council adopted the resolution that they hold out inducements unto some respectable parties for the construction of a street railway from the corner of Jefferson avenue and Woodward avenue, along Woodward avenue as far as Grand River avenue and Grand River avenue as far as the city limits, shown on page 63 of the Council Proceedings of 1865 and 1866, a copy of which is hereto attached and marked Exhibit "22."

I offer in evidence memorandum of a petition filed by Mr. Mansfield and others for permission to construct a street railway on Woodward avenue and Grand River avenue; under date April 21, 1868, found on page 17 of the Council Proceedings of 1868, a copy of which is hereto attached, and marked Exhibit "23."

I offer in evidence an ordinance adopted by the council,
546 granting to Nathaniel Prouty, Moore F. Dickinson, William B. Wesson, Harvey King and James T. Mansfield; an ordinance for the construction and operation of a street-car line on Woodward and Grand River avenues; approved May 1, 1868; found on pages 44, 45 and 46 of the Council Proceedings of 1868; a copy of which is hereto attached, and marked Exhibit "24."

I offer in evidence the acceptance of the ordinance above mentioned, notice of which was filed in the city clerk's office, as shown by the council proceedings of May 26, 1868, found on page 102 of the Council Proceedings of 1868; a copy of which is hereto attached, and marked Exhibit "25."

I offer in evidence a report of special committee of the common council, together with the resolution adopted by them under date July 17, 1866; shown on page 143 of the Council Proceedings of 1865 and 1866, a copy of which is hereto attached, and marked Exhibit "26."

I offer in evidence a petition of the Grand River Street Railway Company, asking permission to extend their tracks down Woodward avenue from Fort street to Jefferson avenue, shown on page 153 of the Council Proceedings of 1870 under date June 14, 1870, a copy of which is hereto attached, and marked Exhibit "27."

I offer in evidence report of the committee on above petition, shown on page 166, under date June 21, 1870, of the Council Proceedings of 1870; a copy of which is hereto attached, marked Exhibit "28."

I offer in evidence report of the committee and city attorney, shown on page 188 of the Council Proceedings of 1870, a copy of which is hereto attached, and marked Exhibit "29."

I offer in evidence a petition of property-holders on Woodward avenue, asking the common council to extend the Grand River Avenue track down Woodward avenue; as shown on page
547 209, under date July 26, 1870, of the Council Proceedings of 1870, a copy of which is hereto attached, and marked Exhibit "30."

I offer in evidence report of the committee of the above petition of property-owners, together with resolution adopted by the common council, shown on pages 244 and 245 of the Journal of Proceedings of 1870, a copy of which is hereto attached, and marked Exhibit "31."

I offer in evidence a resolution offered by Ald. Folsom with reference to the extension of the track of the Grand River Avenue street railway down Woodward avenue to Jefferson from Fort street, shown on page 162 of the Journal Proceedings of 1871, a copy of which is hereto attached, and marked Exhibit "32."

I offer in evidence report of city attorney upon resolution, sub-

mitting the ordinance; shown on page 196 of the Proceedings of 1871, a copy of which is hereto attached, and marked Exhibit "33."

I offer in evidence ordinance granted by the common council approved June 26, 1871, on page 260 of the Council Proceedings of 1871, a copy of which is hereto attached, and marked Exhibit "34."

I offer in evidence an ordinance granted to the Western Transit railway, approved March 28, 1873, found on pages 86 and 87 of the Council Proceedings of 1873, a copy of which is hereto attached and marked Exhibit "35."

I offer in evidence the ordinance granted by the common council over the mayor's veto on April 15th, 1873, granting to the Grand Trunk Junction street railway, the lines known as the Congress and Baker Street railway lines, shown on page- 118 and 119 of the Council Proceedings of 1873, a copy of which is hereto attached and marked Exhibit "36."

I offer in evidence ordinance granted by the common council over the veto of the mayor June 13, 1873, to the Detroit &
548 Grand Trunk Junction street railway, granting line on Congress, Larned, Randolph, Jos. Campau, Seventh, Baker, and Twenty-fourth street-, shown on pages 304 and 305 of the Council Proceedings of 1873, a copy of which is hereto attached and marked Exhibit "37."

I offer in evidence the ordinance passed by the common council and approved July 11, 1873, granting to the St. Aubin Street railway the right to construct a road on St. Aubin avenue, found on pages 368 and 369 of the Council Proceedings of 1873, a copy of which is hereto attached and marked Exhibit "38."

I offer in evidence an ordinance granted to the Highland Park Railway Co., approved July 13, 1886, granting a line on Woodward avenue, commencing at the railroad crossing and extending on Woodward avenue northerly to the city limits; shown on pages 374 and 375 of the Journal Proceedings of 1886, a copy of which is hereto attached and marked Exhibit "39."

I offer in evidence a veto message of Mayor Pridgeon under date December 11, 1886, shown on pages 617 and 618 of the Council Proceedings of 1888, vetoing the ordinance granted to W. A. Jackson, Frank E. Snow, and others, for a street railway on certain streets not then occupied by a street railway and the concurrence of the council in his recommendation, which was that such franchise should be sold to the highest bidder, a copy of which is hereto attached and marked Exhibit "40."

I offer in evidence a resolution adopted by the common council October 2d, 1888, offered by Ald. Griggs, in accordance with the recommendation of the mayor above referred to, providing for the appointment of a committee of five, to advertise for proposals for the construction and operation of street railway lines in the city of Detroit, shown on page 674 of the Council Proceedings of 1888; a copy of which is hereto attached and marked Exhibit "41."

549 I offer in evidence the report of the committee appointed upon the resolution of Ald. Griggs above referred to, together with the proposition of bids that were submitted in accordance with

the advertisement authorized by the resolution and submitting to the common council an ordinance granting eight tickets for a quarter, morning and evening, shown on pages 806, 807 and 808 of the Council Proceedings of 1888, a copy of which is hereto attached and marked Exhibit "42."

I offer in evidence the proceedings of the common council under the third reading of ordinances of December 11, 1888, showing the adoption of the ordinance and acceptance of the bid of John B. Corliss, M. S. Forbus and John F. Barry and Henry Steers above referred to; shown on pages 809 and 810 of the Council Proceedings of 1888, a copy of which is hereto attached and marked Exhibit "43."

I offer in evidence communication of Mayor Pridgeon, dated December 18, 1888, vetoing the ordinance above referred to, passed by the council in accordance with the advertisement and bid of the resolution of Ald. Griggs, shown on pages 826, 827 and 828 of the Council Proceedings of 1888, a copy of which is hereto attached and marked Exhibit "44."

I offer in evidence an ordinance granted to the Detroit city railway, approved January 23, 1889, shown on pages 31, 32 and 33 of the Council Proceedings of 1889; said ordinance covering the right to construct lines upon streets mentioned in the ordinance vetoed by Mayor Pridgeon above referred to, a copy of which is hereto attached and marked Exhibit "45."

(Signed) CHARLES R. FORSTER.

Subscribed and sworn to before me this 12th day of November, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Michigan.

550 OCTOBER 31ST, 1895—2 p. m.

HENRY A. EVERETT, a witness produced on behalf of defendants, being first duly sworn by the commissioner, and being orally examined by Mr. Hanchett, of counsel for defendants, testified as follows:

Q. You have been already sworn in this case as a witness on the part of the complainant, haven't you?

A. Yes.

Q. What position do you hold in the Detroit railway?

A. Vice-president and general manager?

Q. Have you been in charge of the work carried on by your company in constructing its lines of roads?

A. Yes.

Q. Do you know Tom L. Johnson?

A. Yes.

Q. What position does he hold with the Detroit Citizens' Street Railway Company?

A. President, I believe.

Q. Who is the vice-president?

A. J. C. Hutchins, I understand.
Q. Who is the secretary of the Detroit Citizens' Street Railway Company?
A. A. E. Peters.
Q. Are you acquainted with Tom L. Johnson's handwriting?
A. Yes.
Q. Are you acquainted with Mr. Peters' handwriting?
A. Yes.
Q. I show you a contract dated the 24th day of May, 1895, between the Detroit Citizens' Street Railway Company and the Detroit Railway Company. Is that contract executed by you as vice-president of the Detroit railway?
A. Yes.
Q. Is that your signature?
551 A. Yes.
Q. In whose handwriting is the signature, Tom L. Johnson?
A. Mr. Johnson's handwriting.
Q. In whose handwriting is the secretary?
A. Mr. Peters' handwriting.

Mr. HANCHETT: I offer that contract in evidence, marked Exhibit "46."
Mr. BAKER: We will object to this as immaterial and irrelevant to the issue.
Mr. HANCHETT: Do you consent that a copy be annexed instead of the original?
Mr. BAKER: Yes.

Q. I show you an agreement made between the same two companies, dated the 1st day of June, 1895; in whose handwriting is the signature Tom L. Johnson?
A. Mr. Johnson's handwriting.
Q. In whose handwriting is the signature, A. E. Peters?
A. Mr. Peters' handwriting.
Q. And is your own signature attached?
A. Yes.
Q. And the secretary of the Detroit railway?
A. Yes.
Q. Who is that?
A. Albert Pack.
Q. He is the secretary, is he?
A. Secretary and treasurer.
Q. That is his signature?
A. Yes.

Mr. HANCHETT: I offer that contract in evidence, marked Exhibit "47," and attach a copy in the same way as the others.
Mr. BAKER: Same objection.

Q. Mr. Everett, these two contracts relate to the subject of
552 the crossing of the Detroit Citizens' street railway by the De-

troit railway. State whether those contracts have been acted under?

A. Yes.

Q. In pursuance of those contracts, how many crossings have been made of the Detroit Citizens' street railway by the Detroit railway?

A. I could not give you the actual number to one or two, but forty or over.

Q. They have been made in pursuance of and under these contracts?

A. Yes, and there have been other crossings made without any contracts.

Q. Exhibit "47," the contract of June 1st, 1895, provides for certain payments to be made by the Detroit railway to the Detroit Citizens' Street Railway Co. Have those payments been made?

A. Yes.

Q. To what amount?

A. On the crossings contract, about $8,300.

Q. Does that include the payment made for the iron-work of the crossings?

A. No, sir, it does not.

Q. It only includes the moneys which you paid to the Detroit Citizens' street railway under the contract?

A. Yes.

Q. The expense of the crossings are in addition?

A. Partially in addition and partially not; that $8,300 includes some material, but how much material I could not tell you. It includes all the labor performed by the Citizens' Street Railway Company in accordance with that contract and some material which they, I believe, had paid for before that.

Q. Can you tell whether all of the crossings specified in the contract of June 1st have been made, the crossings named there, streets?

553 A. Yes, practically all.

Q. They are now in place and being used?

A. A large number are being used and a large number will be used within a few days.

Q. On page 12 of this contract of June 12th, provision is made for the Detroit Company to pay the Citizens' Co. the sum of $2.50 at the time of the execution of the contract, in consideration of the agreement of the Citizens' Company to remove the cross-over track at the intersection of Woodward avenue and Forest avenue, was that sum paid?

A. Yes; the cross-over was removed.

Q. How much of the Detroit Railway road was constructed prior to the 24th of May, 1895?

A. In the neighborhood of four miles, maybe four and a half miles.

Q. How much of the Detroit Railway road has been constructed since?

A. At the present time we have constructed and completed 47¼ miles, including that four miles.

Q. Had you begun to operate any cars prior to May 24th?

A. No, sir.

Q. I show you contract dated May 24th, 1895, made between the same companies, relating to the exchange of electric current; state whether the signature of Tom L. Johnson to that contract is in the handwriting of Mr. Johnson.

A. Yes.

Q. And the signature of Mr. A. E. Peters?

A. Yes.

Q. It is in his handwriting?

A. Yes.

Q. You executed yourself for the Detroit railway?

A. Yes.

554 Mr. HANCHETT: I offer that in evidence; paper marked Exhibit "48," copy to be annexed in same way.

Mr. BAKER: Objected to as immaterial and irrelevant.

Q. Since making this contract just shown to you, have the two companies operated under it?

A. Yes.

Q. Does the Detroit Railway Co. receive current from the Citizens' Co. and the Citizens' Co. receive current from the Detroit railway?

A. Yes.

Q. In the operation of your road?

A. Yes.

Q. At what point does this exchange of current take place; I don't mean the particular points, but is it at crossings and where you both use the same track?

A. Yes.

Q. I show you contract made between the same companies, dated May 24th, 1895, relating to the connecting of the Detroit Railway line with the Citizens' line on Jefferson avenue, by putting in a curve at Shelby street and other matters. State whether that contract is signed by the president, Tom L. Johnson, and the secretary, A. E. Peters, for the Citizens' Co.?

A. Yes.

Q. And by yourself for the Detroit railway?

A. Yes.

Q. In pursuance of that contract, did the Detroit railway make a connection with Jefferson avenue at Shelby street?

A. Yes.

Q. Putting in a curve?

A. Yes.

Q. And are you running on to Jefferson avenue over that curve?

A. No, sir, not now.

555 Q. But it is ready for use in that way?

A. Will be used within two or three days.

Q. When you speak of within two or three days, what do you refer to?

A. We expect—we have expected to use that line for some days, but there have been little delays caused by the laying of the curve; the Citizens' Company didn't lay the curve from Griswold street into Woodbridge street until we notified them we would go up and lay it, and then they went ahead.

Q. The delay is in getting fully ready to operate it, then?

A. Yes.

Q. Have you constructed your track on Bates street, referred to in the contract?

A. Yes.

Q. Have the connections been made so that the Citizens' Company can run over that track if they desire to?

A. Yes.

Mr. HANCHETT: I offer this contract in evidence, a copy of which will be marked Exhibit "49."

Mr. BAKER: Same objection.

Q. I show you contract dated May 24, 1895, made between the same companies, relating to the track along Griswold street, over Jefferson avenue to Atwater street, owned by the Citizens' Company, and a track on Woodbridge street over Griswold street to Bates street, intended to be built by the Detroit railway; state whether that is executed by Mr. Johnson and Mr. Peters, as president and secretary respectively of the Citizens' Company?

A. Yes.

Q. And in their handwriting?

A. Yes.

Q. Did you execute for the Detroit railway?

A. Yes.

556 Mr. HANCHETT: I offer that in evidence, a copy of which is hereto attached, and marked Exhibit "50."

Mr. BAKER: Same objection.

Q. Has the track referred to in this contract on Woodbridge street over Griswold street to Bates street been constructed by the Detroit railway?

A. Yes.

Q. Have connections been made so that the Citizens' Company can run over that track?

A. Yes.

Q. And connections have been made so that the Detroit railway can run over the Griswold Street track from Jefferson to Atwater?

A. Yes, sir.

Q. Are they being operated?

A. No, sir.

Q. Why not?

A. Not quite ready.

Q. Arrangements have not been fully completed?

A. These tracks will be operated, as I said before, within two or three days, within a week, anyway.

Q. I show you a contract dated May 4th, 1895, made between the

same two companies, relating to the laying of tracks on Griswold street and Rowland street, between Grand River avenue and State street; state whether that was executed by Tom L. Johnson?

A. Yes.

Q. In his handwriting?

A. Yes.

Q. And by you?

A. Yes.

Mr. HANCHETT: I offer those in evidence, copies of which are attached, marked Exhibits "51 A" and "51 B."

Mr. BAKER: Same objection.

557 Q. Has this contract been acted under by both companies?

A. Yes.

Q. Tracks built in pursuance of agreement so made?

A. That is a memorandum agreement. There is another agreement covering the same thing.

Q. Has the track been laid by the company as contemplated in this agreement?

A. Yes.

Q. Are they being operated?

A. Yes, they are.

Q. By both companies?

A. Yes, jointly.

Q. For how long a time have they been operated?

A. Since the 8th day of July.

Q. I show you a letter dated August 19, 1895, with what purports to be an acceptance by the Detroit Citizens' Street Railway Company of the ordinance of the city of Detroit, approved August 13, 1895; state in whose handwriting the letter of August 19th is?

A. The signature is that of Mr. Hutchins, vice-president of the Citizens' Co.

Q. Did you receive that letter from him?

A. Yes, by messenger.

Q. At or about its date?

A. Yes.

Q. In whose handwriting is the signature, J. C. Hutchins, vice-president, and A. E. Peters, to that paper?

A. Mr. Hutchins' and Mr. Peters'.

Mr. HANCHETT: I offer the letter of August 19 and the acceptance in evidence, and the printed slip of the ordinance. The printed slip is a printed copy of the ordinance of August 13th, which has been already introduced in evidence, a letter marked Exhibit "52" and acceptance marked Exhibit "53."

558 Q. Mr. Everett, have you in mind this ordinance of August 13, to which this letter and acceptance referred?

A. Yes.

Q. What have the companies done under that ordinance?

A. Built the track therein authorized, erected overhead structure.

Q. Has either company begun operating on the track?

A. I think the Citizens' Company took one car over.
Q. For how long?
A. I don't know, for a day or two.
Q. Then they have begun operating?
A. Yes.
Q. The Detroit railway is in what situation?
A. They expect to run there day after tomorrow.
Q. Will be ready to begin running at that time?
A. Yes, regularly.
Q. Operating under that ordinance?
A. Yes.
Q. I show you an agreement made between the same two companies dated December 24, 1895, relating to the joint use of Porter street, Abbott street, and Michigan avenue. State in whose handwriting the signature of J. C. Hutchins is?
A. Mr. Hutchins' signature.
Q. And in whose handwriting is the handwriting A. E. Peters?
A. Mr. Peters' handwriting.
Q. And is executed on the part of the Detroit railway by whom?
A. By myself as vice-president and Mr. Starring as assistant secretary.
Q. Your signature was written by yourself?
A. Yes.
559 Q. Was the signature of the assistant secretary written by Mr. Starring?
A. Yes.
Q. He is the assistant secretary of the Detroit railway?
A. Yes.

Mr. HANCHETT: I offer that in evidence, a copy of which is marked Exhibit "54."
Mr. BAKER: Same objection.

Q. The ordinance of October 8th, which has been put in evidence in the case, was the ordinance passed in pursuance of this agreement, was it?
A. Yes.
Q. What has been done by the two companies in pursuance of that ordinance and of this agreement?
A. Both companies accepted the ordinance within a specified time, and the Detroit railway has paid $8,000 to the Citizens' Company to use those tracks and is at present using a portion of them.
Q. Put in the curve connections?
A. Put in the curve connections.
Q. Are the two companies now using the two tracks jointly, or any portions of the same track?
A. Yes.
Q. On what streets?
A. On Michigan avenue from Rowland street to Griswold street under that contract.
Q. And how much track does this contract contemplate the joint

use of by the two companies on Michigan avenue, and Porter and Abbott?

A. About three-quarters of a mile of track.

Q. Does that three-quarters of a mile include also the track that is jointly used under the ordinance of August 13?

A. No, sir.

560 Q. How much——

A. (Interrupting.) It goes to the point——

Q. How much is there of joint track contemplated to be used in that ordinance of August 13th?

A. I should say about the same distance, about three-quarters of a mile of track.

Q. Making it a mile and a half under both?

A. Yes.

Q. Under this last contract, under which you have paid, as you say, about $8,000 to the Citizens' Street Railway Company, is the ownership of the track joint also, as well as the use?

A. Under that contract?

Q. Yes.

A. Why, as I understand it, yes.

Q. On what account did you pay the $8,000 to the Citizens' Company?

A. For a half interest in the Michigan Avenue tracks.

Q. When did the Detroit railway begin operating its street railroad in the city of Detroit?

A. Our trial trip was run on the 1st day of July, and we began to carry passengers on the 8th day of July.

Q. You have already stated the mileage which you have constructed?

A. Yes.

Q. The Detroit railway has completed its system in the city?

A. Practically; there are a few outlying lines that have not been built.

Q. What lines are those?

A. Oakland avenue, and the upper part of Scotten avenue, and Buchanan street, and about a mile on Mt. Elliott avenue.

Q. Do you contemplate completing those?

A. Yes.

561 Q. Is the work still going on for the final completion?

A. Not for those before mentioned?

Q. Why not?

A. Owing to the city government refusing to lay the concrete foundation.

Q. Those are unpaved streets?

A. All of them except Mt. Elliott avenue.

Q. The delay has arisen on account of the fact of their being unpaved, and of getting at arrangements for paving?

A. Yes, the city has not been willing to go ahead with the work.

Q. On how many different streets in the city of Detroit has your line been completed?

A. Forty-nine.

Q. What amount has been already spent by the Detroit railway in the construction and equipment of its street railway in the city of Detroit?

A. Over seventeen hundred thousand dollars.

Q. Including your power-house as part of the equipment?

A. And all other buildings, of course?

Q. Yes.

A. Over seventeen hundred thousand dollars.

Q. Has it all been paid out already?

A. No, sir, a portion of it is still due on contracts.

Q. How much has been actually paid out? In money?

A. Over a million and a half.

Q. And the balance exists in obligations?

A. Yes.

Q. To be paid by the company?

A. Yes.

Q. What is the character of the road, the street railroad itself?

562 A. It is the best-known construction of the latest modern practice in every particular.

Q. How heavy is the rail?

A. Eighty-five pounds to the yard.

Q. What is the character of the cars constituting the equipment of the road?

A. The cars are of the best make, and of the latest pattern, a combination car which has proved very popular in many other cities. The equipment of the motors is the very latest type of the Westinghouse Manufacturing Company's motors completed.

Q. What do you say as to the equipment as a whole?

A. The best that money can buy.

Q. What number of cars will the company use in operating the lines now completed—forty-seven miles?

A. Sixty.

Q. How long have you been operating the forty-seven miles of road?

A. We are not operating the entire forty-seven miles now; we operate forty miles now with fifty cars; the other seven miles is completed as far as the road-bed goes, but it will be a day or two before we can get cars on it.

Q. How long have you been operating forty miles, say?

A. That has been added to from time to time; we have been operating the entire forty miles for about three weeks.

Q. What is the average daily number of passengers carried on that forty miles which you are operating?

A. Over twenty thousand every day.

Q. Mr. Everett, if you will come over here and look at this map a moment. Some question came up in the examination of Mr. Burton yesterday about the accommodation of the public by your line on Fourteenth street. The question was put by the Citizens' counsel as to whether the public, the people residing north

563 of Grand River would not be better accommodated by going down Fourteenth street to Grand River, and then down

Grand River to the center of the city, instead of going down the lines of the Detroit railway. What do you say about that, about how the public is in fact accommodated by your line that runs down Fourteenth street, and then on your line to the center of the city?

A. It gives them better accommodations than in any other way on part of Fourteenth avenue, and that is clearly demonstrated by the way the Citizens' road on Trumbull goes; instead of turning on Grand River and going down—it simply kills that argument, because they run straight across Grand River and go down to Michigan avenue, so that if you diverted the line of Fourteenth avenue at Grand River you would practically shut out all the people desiring to ride on cars between Grand River and Michigan.

Q. From the point where Fourteenth street crosses Grand River to Michigan avenue, what is the distance?

A. I should think it were about a mile and a quarter.

Q. Suppose a person takes a car on your road on Fourteenth street and goes to the center of the city over your line, and another person takes your car at the same point and goes down to Grand River, and there changes cars without loss of time, and goes down to the center of the city; what would be the difference in time?

A. Three minutes from the competing points—from the junction where we cross them on Grand River avenue to Woodward avenue. The difference in running time is three minutes.

Q. How large a public is accommodated by your road on Fourteenth street?

Mr. HATCH: Fourteenth avenue.

Q. Fourteenth avenue?

A. I could not give the number.

564 Q. State whether it is a large district?

A. It is a large district and thickly populated, and very well patronized.

Q. What is the distance from Fourteenth avenue to Trumbull avenue?

A. It is seven blocks, upward of half a mile.

Q. What accommodation has the public in the way of street railways west of Fourteenth avenue?

A. There is no north and south line at all; we have a franchise for one which has not been built owing to the city's delaying the foundations.

Q. What streets?

A. Scotten avenue.

Q. Between Fourteenth avenue and Scotten, is there any north and south railway?

A. There is not, no, sir.

Q. What is the distance?

A. I should think it were about a mile and a half, maybe not quite that much—a mile and a quarter or a mile and a half.

Q. Now going to the other side of Woodward avenue. Attention

was called to Hastings street—how far is Hastings street east of Woodward?

A. It is a little over half a mile.

Q. What accommodation had the people on and near Hastings street before the construction of your road?

A. They had a line on St. Antoine street for a few blocks, laid zigzag on two or three different streets.

Q. These lines here? (Pointing to map.)

A. Yes.

Q. Point out the streets.

A. Ran up Brush to Rowena, and runs up St. Antoine street to Farnsworth, across Farnsworth to Russell street, and up Russell three or four blocks, then over to the railroad.

565 Q. Going up Hastings street—Piquette—your road turns on Piquette street west?

A. Yes.

Q. Two blocks?

A. Yes.

Q. Now does your contemplated line go north from there?

A. Yes.

Q. What distance?

A. About two and a half miles.

Q. To the city line?

A. Yes.

Q. You go up Beaubien street?

A. To Hamlin avenue and easterly on Oakland avenue and northerly to the city limits.

Q. What distance on Oakland avenue?

A. I should think about a mile and three-quarters.

Q. What is the distance of Oakland avenue from Woodward avenue?

A. Fully half a mile; I think a little over half a mile.

Q. Is there any street railway between those two avenues?

A. No, sir.

Q. What is your average speed?

A. Our schedule is eight miles per hour.

Q. Continuing the subject of the plan of your road, running out Forest avenue east of Hastings street, what accommodation has the public in the neighborhood of your line of road, as it exists east of Hastings street?

A. Formerly there was only one line in that entire district, the Chene Street line. Our cross-town line gives passengers there a transfer to the center of the city down Beaubien from Forest avenue, and they also run down Mt. Elliott avenue and have direct access to both the east end of the cemetery and to the Belle Isle
566 bridge without bringing people down to the center of the town and pulling them out from the center again.

Q. In this district between the Detroit & Milwaukee railway and Mt. Elliott avenue, in all that district is there a railway?

A. Just one, the north and south line—the Chene Street line.

Q. Is there any east and west line besides the Detroit railway?

A. No, sir. Never has been.

Q. From the operation of your lines—taking into account the different operation of your lines and the patronage that the public has given the lines—state whether it is proved as a fact already, that your lines accommodate the public?

A. Yes, it is.

Q. Meeting a public need.

A. Yes.

Q. I have been asking you questions by reference to a map entitled, "Map of the city of Detroit, Michigan, 1895." On this map heavy red lines are laid out, which I understand indicate the lines of the Detroit railway already completed, is that correct?

A. Yes.

Q. On the same map are broken lines, or lines consisting of blocks of red—what do those broken lines indicate?

A. Franchises granted but not constructed.

Q. They are all lines which you contemplate constructing?

A. Yes.

Q. Now, this map is only a map of the city of Detroit as to territory?

A. Yes.

Q. To the north of Detroit, does your system of street railway extend?

567 A. No, sir.

Q. Does your system extend outside of the city, west?

A. Yes.

Q. Into what township?

A. Springwells.

Q. That line is completed to the township line of Springwells, is it?

A. It is into Springwells one and three-quarter miles.

Q. What is the extent of your line which has been constructed outside of the city west?

A. We have constructed one and three-quarter miles under our franchise, and we have rights there for upwards of nine miles of track.

Q. How much do you contemplate constructing?

A. Nine miles.

Q. In all?

A. Yes.

Q. Does that constitute a part of your entire system?

A. Yes.

Q. Your franchise and rights to the west of the city for constructing your road, is obtained from the township?

A. Of Springwells, yes.

Q. I call your attention to the territory to the north of Michigan avenue, and west of Grand River avenue into which your line on Warren avenue extends; what accommodation has the public between Grand River and Michigan avenues to the northwest of the railroad—the Grand Trunk railroad?

A. No accommodation except our line.

Q. What is the distance between Grand River avenue and Michigan avenue northwest of the Grand Trunk railroad?

A. I should think it were about two miles, very near that.

568 Q. What is the distance on the line of your road where it crosses the Grand Trunk at the city line?

A. About a mile and a quarter.

Q. Is that a part of the city that is built up?

A. Yes, very largely, and rapidly building.

Q. What is the character of the city there along your line from where it leaves Michigan avenue until it touches the west limit of the city upon Dix avenue?

A. It is thickly populated the entire distance.

Mr. HANCHETT: I will offer this map in evidence, which has been referred to by the witness, and questions thereto, for the purpose of showing the lines of the Detroit railway as located in the city.

Map marked Exhibit "C."

Q. I call your attention to your line as laid down on this map as it approaches the cross-over to Belle Isle park; here is a square indicated by your line, one side of which is on Jefferson avenue, one side on Field, and one side on Champlain, and the other on Concord avenue; how much of that square is jointly used by your company and the company that operates a street railroad on Fort street?

A. They use about three-quarters of that loop jointly with our company.

Q. You use on that a part of the Citizens'?

A. We use the Citizens' span wire to support our trolley wire. We have laid a third track independent of them, to which no objection was made, which runs over Field avenue to Concord avenue.

Mr. CORLISS: What is the distance?

A. Between fourteen and fifteen hundred feet.

Mr. HATCH: On Jefferson?

A. Yes, a third track.

Q. The travel to Belle isle during the summer months is very extensive?

569 A. Yes.

Q. Isn't it true that both under the ordinance and in practice, one fare carries a passenger on your lines from one side of the city, from one extreme limit to the other?

A. For one fare, yes.

Q. A person may ride over your entire line for one fare?

A. Yes, so he stays on the car, that is all we ask.

Q. He may ride forty-seven miles for one fare?

A. Provided he would leave out the outer ends of the routes; he would have to stay within the transfer bounds.

Cross-examination.

By Mr. BAKER:

Q. Mr. Everett, if your company owned the Michigan Avenue line of the Citizens' Company wouldn't you as a practical street

railway man run your Fourteenth Avenue cars down Michigan avenue?

A. If we had a monopoly, yes.

Q. And it is also true that you would run your Hastings Street line down Gratiot, if you owned the Gratiot Avenue line?

A. Under the same circumstances, yes.

Q. You have referred to this third track on Jefferson avenue, that means you have a single track on the north side of the street?

A. Yes.

Q. And the Citizens' Company has a double track there?

A. Yes.

Mr. HATCH: You don't mean the track is actually laid?

A. We are running on the third track and have been for months.

Q. Doesn't that make a dangerous and inconvenient street of Jefferson avenue at that point?

570 A. No, sir, no more than Woodward with three tracks on.

Q. Isn't Jefferson avenue at that point a narrow street?

A. No, sir.

Q. How wide is the crossing?

A. Amply wide for two vehicles to pass outside the cars on the outside of the track anywheres.

Q. Have you ever driven through there recently?

A. I drove through there last Sunday.

Q. Did you ever drive through there when your cars were on the track?

A. Yes.

Q. Do you mean to say there is room for two vehicles to pass north of your cars?

A. I do.

Q. How wide is it?

A. Something over 12 feet.

Q. Isn't it less than 12 feet?

A. No, sir, not to the best of my knowledge and belief it isn't.

Q. In order to have two teams go by there, wouldn't they have to be as close to each other as a foot?

A. It is perfectly practicable; I know it is because I have passed there.

Q. Did you go by a team?

A. Yes, while a car was going by, yes.

Q. Would it not be a great deal better for the public if you used the Citizens' line at that point?

A. No, sir,

Q. There is no practical inconvenience out there resulting from this third track?

A. I think not, no, sir.

Q. You look at that from the street railway point, and

571 not from the point of a driver in a carriage on the street, I suppose?

A. Yes.

Q. You have endeavored, haven't you, as far as possible to reach the center of the city with your lines?

A. Yes, sir.
Q. Your lines are not constructed just to reach Belle isle?
A. No, sir.
Q. The principal traffic is towards the center of the city?
A. Partly.
Q. On Sundays and holidays there is a large traffic to Belle isle?
A. We are carrying a good deal of traffic down there right now.
Q. You have got forty miles in operation?
A. Yes.
Q. How many fares do you collect, or passengers do you carry in a day?
A. We have been running along 20,000 passengers for the past sixty days.
Q. What do you realize for them?
A. We realize an average fare of three and fifty-two one-hundredths cents.
Q. An average fare of three and a half cents?
A. Yes, sir.
Q. What does it cost you to operate your road a day?
A. That is a problematical thing at the present time, we hire power.
Q. Who do you hire power from?
A. The Detroit electric light works, and the Detroit Electrical Manufacturing Company.
Q. Haven't you a power-house of your own?
572 A. Yes, now.
Q. What do you pay a day for your power of the Detroit Electric Company?
A. According to how many car miles we run; three and a half cents a mile.
Q. How many car miles do you run in a day?
A. 7,500 miles, about, we are running.
Q. How much do you pay a mile?
A. We are paying them three and a half cents, which we can manufacture in our own house for six-tenths per cent.
Q. Your own house when done?
A. It is running today enough power to run the entire system and we have notified both power-houses that we would discontinue, we had to give thirty days' notice.
Q. Your total investment for your forty miles, including the forty-seven miles in operation, you say, is about a million and three-quarters?
A. Yes.
Q. What will the whole forty-seven miles cost when complete?
A. All those things are paid, the only thing necessary to pay is about the labor.
Q. Who furnished the money to build this road?
A. The stockholders.
Q. Who are the stockholders?
A. The Messrs. Pack and myself and several other gentlemen.
Q. Have you mortgaged or bonded this company?

A. We have not.
Q. This property of this company?
A. No, sir, we have not.
Q. Have you borrowed any money for it?
A. Yes.
Q. How much did you borrow?
573 A. Borrowed about $350,000.
Q. And the stockholders have paid in all the rest of it?
A. Yes.
Q. I see you have got a dotted line on Woodward avenue.
A. Yes.
Q. So that you contemplate building a line on that street?
A. We have applied for that franchise, yes.
Q. Has it been granted to you?
A. Not yet, no, sir.
Q. On that street there are how many tracks at the present time, occupied by the Citizens' Co.?
A. Two part of the way and three part of the way.
Q. You have applied for a franchise to build another there?
A. Yes, sir.
Q. Would that be of great value to your property?
A. Yes, sir.
Q. And it would be a very desirable improvement to facilitate the transaction of business on your line?
A. Yes, it would be a benefit to our patrons.
Q. And it would also be a benefit for the company?
A. Yes.
Q. It would increase the revenue of your company very largely?
A. Yes, I think it would.
Q. Do you own any stock in the Citizens' Co.?
A. Yes.
Q. How much?
A. I am interested in $100,000, par.
Q. You and Mr. Pack and other stockholders of the Detroit Co.?
A. Yes, sir.
574 Q. Has Tom L. Johnson and any of his associates got any stock in your company?
A. Not that I know, no, sir.
Q. I suppose some of that stock has been hypothecated and pledged to borrow money?
A. I have no doubt.
Q. Couldn't both of these systems, Mr. Everett—I put this question to you as a practicable railroad man—be greatly improved if they were all under one management and one control?
A. In what manner, Mr. Baker?
Q. In every manner, in every way, couldn't they be improved, the public better accommodated, and the expense of operating the roads, and the whole thing be better if both systems were controlled by one company?
A. From the public standpoint, no; from the railroad standpoint, yes.

A. I suppose you are running it entirely in the public's interest; not from a railroad standpoint?

A. We are under some obligations to the public, Mr. Baker.

Q. Before election?

A. We are under some obligations to the public.

Mr. HATCH: We are running the road for our health.

Q. On an average about how much a mile does it cost to build and equip a modern electric railway line, such as has been constructed in this city during the present year?

Mr. HATCH: Are you going to include the concrete under the rails or not; you make a point in one case that the concrete is a part of our road-bed, and we insist it ain't, and I want to know if that is in.

Q. With or without the concrete, state it both ways.

A. Of course, the first few miles of a modern electric railway company have got to stand the total expense of a power-
575 house, which adds an enormous amount per mile; now, our power-house as at present is in position to run four times as many cars as we expect to run over the balance of this fifty miles; the next ten miles would be merely the street construction and the equipment which we will have to have and will operate sixty miles just as well as fifty.

Q. Do you operate forty or fifty miles with one power-house?

A. Certainly. We could run every car in the city of Detroit out of our power-house.

Q. You could run the Citizens' system too with the power-house you have built?

A. Yes.

Q. They have their own power-house, too?

A. Yes.

Q. And one of the results of the consolidation would be you could get rid of one power-house?

A. Yes.

Q. How much did this power-house cost?

A. I know how much ours cost.

Q. How much?

A. Over $300,000.

Q. I suppose it is quite an expensive thing to run?

A. No, sir, it is very economical to run.

Q. The consumption of coal costs something?

A. It costs very little money when you come to size it up, building and modern plant with all the latest improvements.

Q. What is the principal item of expense?

A. The consumption of fuel is the largest part of the outlay.

Q. I don't suppose it takes a very big gang of men?

A. A very limited number, and we have got in fuel economizers and condensers on the engines which will bring the consumption of fuel down to a minimum.

576 Q. Then I suppose the overhead construction, the electric construction is expensive?

A. We have spent about $50,000 more than we needed putting

in the overhead construction; if we had put in wooden poles like the Citizens' did, we could have got off with considerably less money.

Mr. HATCH: What are the poles?

A. Iron throughout the entire system.

Q. In the end those will be the cheapest?

A. Yes, it don't pay us near the interest on the investment.

Q. That is more or less part of your expense, the interest on the investment; or is that where the shoe pinches?

A. The interest on the investment will amount to considerable money a year.

Q. I see you have a dotted line here down Second street to River street?

A. To Woodbridge street.

Q. To Woodbridge street. The object of that is to enable you to reach the foot of Woodward avenue?

A. To the Michigan Central depot we are trying to get to, and as near as we can to the boat landing.

Q. Have you built a third track on Michigan avenue, from Second street to the city hall?

A. No, sir.

Q. You use the Citizens' Co.'s track there?

A. Yes, sir.

Q. Under one of these agreements?

A. Yes.

Q. In fact your system here would hitch onto the Citizens' system very readily?

A. From a practical railroad standpoint?

Q. Yes.

A. Yes.

577 Q. When do you think of building this line out Oakland?

A. When the city is ready to go ahead with the paving.

Q. They are not paved?

A. Why should we?

Q. Can't you build under your franchise, can't you build on an unpaved street?

A. They have agreed to do certain things on unpaved streets.

Q. They agreed to pave it?

A. To lay the concrete foundation as soon as we built our track, and they declined to do so.

Q. You can't give me any idea of what your operating expense is now per day?

A. I can't tell you what it will cost for car service.

Q. The total. I don't care about it in detail.

A. I would like to do that Mr. Baker, but in figuring the cost of power, why that is variable, and the excessive charges from these power-houses which will be discontinued very shortly, I can tell you what we pay our motormen and conductors per hour.

Q. I can see in your testimony, that you are getting something like $750 a day from the public and you cannot really state what it

is going to cost you per day, until you have operated this power-house?

A. I can tell that from absolute knowledge of power-houses in other cities.

Q. Can you tell us what it would cost you a day, after you get your power; what is the estimated cost to you a day to operate the road, after you get your power-house in operation?

A. When we get in full complete operation with our fifty miles of track we can run just as cheap as in Toronto and Cleveland, where it costs eight cents a car mile; that would be $600 for seventy-five miles.

578 Q. That is, you are getting an income of about $600 a day now, or $750 now, and it will cost you $600 a day to run it after you get it all completed?

A. Yes, that is right.

Q. So that you will make a profit of $150 a day?

A. Yes, without the business being established.

Q. I suppose you are satisfied with that on an investment of $2,000,000?

A. For the first year I think it is remarkable, with a thirty years' franchise we can work that business up; if we didn't improve on that for five years, I should think we had a good investment.

Q. As a matter of fact, it is the term of years of these franchises that you expect to make money on?

A. We expect to build up a good business.

Q. You don't expect it to be very profitable for ten or fifteen years?

A. I didn't say as long as that, five.

Q. Ten years?

A. Ten years is too long.

Q. You think you will be making money in five years and all the rest of the franchise, twenty-five years after?

A. Yes, I think so.

Q. That is where the profit is in the business?

A. Yes.

Q. You anticipate the future?

A. We have got to establish our business before we can have any business.

Mr. BAKER: I think that is all for the present.

Examined by Mr. CORLISS:

Q. In the operation of your line that runs onto Michigan avenue, in using it jointly, the tracks with the Citizens', it extends,
579 doesn't it along Michigan avenue, east of Griswold, across Woodward avenue, and northeasterly on Monroe avenue to Farmer?

A. Yes.

Q. Forming a loop with State street?

A. Yes.

Q. That has been in operation how long?

A. I should think three weeks.
Q. Under a mutual agreement with the company?
A. Yes.

Mr. HANCHETT: I will offer in evidence a certified copy of the articles of association of the Detroit railway, marked Exhibit "55."

(Signed) HENRY A. EVERETT.

Subscribed and sworn to before me this 11th day of December, A. D. 1895.

(Signed) D. AUGUSTUS STRAKER,
Circuit Court Commissioner.

JOHN B. CORLISS, a witness produced on behalf of the defendant, first being duly sworn by the commissioner and being orally examined by Mr. Hanchett, of counsel for the defendant, testified as follows:

Q. Mr. Corliss, you are one of the solicitors for the defendant?
A. Yes.
Q. You offered in evidence yourself certain records of the proceedings of the common council in this case; did you search those records yourself?
A. Yes.
Q. Personally?
A. Yes.
Q. From 1862 down to 1890; state whether you examined the records for the purpose of determining whether there was any records showing any protest or objection made at any time by
580 the Detroit city railway or the Detroit street railway to the several ordinances granted by the common council of the city of Detroit, which you put in evidence.
A. I made that search very carefully in all of the volumes containing the entire proceedings of the common council for those years.
Q. Did you find any objection or protest made to those proceedings or ordinances of the common council, made by or on the part of the Detroit city railway?
A. No, sir.
Q. Did you also examine with a view to determine whether there were any proceedings taken by the common council to designate streets on which the Detroit city railway should construct a street railway, after the adoption of the original ordinance of 1862?
A. I made such an examination very carefully.
Q. State whether you found any record of any designation of streets.
A. I am confident there is no such record in existence.
Q. You found none?
A. I found none.
Q. The complainant put in evidence the testimony of Sidney D. Miller of a communication made by him to the common council of the city of Detroit of date, November 11, 1876, and Exhibit "F,"

and Exhibit "G" of complainant's testimony on the subject of the claim of the Detroit city railway to the right to construct street railways on the streets of the city; did you examine the record of the proceedings of the common council for the purpose of determining whether the communication of Sidney D. Miller referred to and the communication to the common council put in evidence by the complainant had reference to any proceedings taken for the granting of a franchise and designating streets for construction?

A. I made such an examination.

581 Q. Did you find any proceedings?

A. No, sir, and none of the ordinances which have been introduced here show grants to other corporations or appear to have been granted or applied for at the time this action was taken by the common council to which you have referred.

Q. Put in evidence by the complainant?

A. Put in evidence by the complainant; I found that all in 1877 Journal of the Council, pages 646 and 630.

Mr. BAKER: 1877?

A. Yes, the reference don't seem to be in your testimony or exhibit.

Q. Was the communication of Mr. Miller and the report of the committee, and the adoption of the report of the committee by the common council—do they constitute all that took place?

A. From the records that is the only thing that appears that I can find; I am sure I made a very thorough search.

Q. You put in evidence today the ordinance adopted by the common council authorizing the Highland Park street railway?

A. Yes.

Q. To construct street railways in the city?

A. Yes.

Q. Were you yourself personally connected with that Highland Park Street Railway Company?

A. I was a stockholder, and a quarter owner in the company.

Q. State whether the Highland Park Street Railway Company constructed a street railroad under that ordinance?

A. It did.

Q. On what streets?

A. On Woodward avenue, commencing at the intersection
582 of the railroad crossing, about three miles from the river, and extending along Woodward avenue northerly to the city limits into the township, a distance of about three miles all told.

Q. Did the company operate the road for any length of time?

A. It was constructed in 1886 and put into operation and operated by that company five or six years, when it was sold to the complainant, or to the stockholders of the complainant, I won't be positive which.

Q. It passed into the control of the complainant, did it?

A. Yes.

Q. And is now being operated by the complainant?

A. Yes.

Q. Were you connected with the formation of that Highland Park Railway Company?

A. I did all of the legal work in connection with it, incorporated it and applied for the ordinance, and represented the company before the common council, and took all the steps necessary to perfect the organization of the corporation, to secure the franchise and build the road.

Q. What objection was made to the granting of that ordinance, or to your company constructing a road and operating it by the Detroit city railway?

A. None whatever, on the contrary before we obtained the franchise, they agreed with us that they would make an exchange of passengers, that is, a verbal agreement which was afterwards put in writing; an exchange of tickets, so that they could take our passengers at the railroad crossing, and we would take theirs.

Q. Was there any designation of those streets by them whatever?

A. No, sir.

Q. Before the adoption of your ordinance?

A. No such thought ever suggested, either by them or any other party.

583 Examined by Mr. HATCH:

Q. Who constructed the railway on the line of streets prescribed in the ordinance of the Detroit City Railway Company, dated in 1889, which has been introduced in evidence, on page three of the Journal of 1889?

A. That franchise ran to them and covered the extension of their line on Fort street east, running up to Brush on Fort, over Congress, thence east on Fort to Mt. Elliott, I think, and then down connecting with their Jefferson Avenue line. That was granted at the same time the Grand River Railway Company obtained a franchise to Congress which has been referred to, and they were both constructed; one by the Grand River Avenue Company and the other by the Detroit City Railway Company, and put into operation in 1890; I don't think they were finished the fall of 1889.

Q. Do you know whether the company, the Detroit City Railway Company, filed a written acceptance of the ordinance?

A. I don't know that of my own knowledge except from examination of the council proceedings, they show that they accepted it.

Q. Do you know whether the company gave a bond as required by the ordinance?

A. The common council proceedings show that they gave a bond and filed it in accordance with that ordinance.

Q. You have not examined to see?

A. I have examined the common council proceedings to show that a bond was filed in accordance with that ordinance.

Q. When was that road built, that extension?

A. It was completed in 1890.

584 Q. And operated by the complainant since they owned the line?

A. It is now being operated by the complainant.

Cross-examination.

By Mr. BAKER:

Q. You have looked over all of the common council proceedings since 1862, haven't you?

A. Up to 1891, I think, Mr. Baker.

Q. You offered the testimony here that immediately after the grant of 1862 to old Detroit city railway they only constructed a small proportion of their system?

A. That is the testimony, I believe, of Mr. Carlyle and Mr. Burton.

Q. Don't you find during all the years since then that from time to time, and from year to year the common council of the city of Detroit passed ordinances which were approved by the mayor and carried over the veto of the mayor providing for the construction of new lines and extensions by the Detroit city railway and its successors?

A. Not new lines, Mr. Baker, but the extension of their lines on Michigan avenue, Gratiot avenue, Woodward avenue and Jefferson avenue; sometimes at the petition of property-holders and sometimes at the petition of the corporation itself, but more times at the petition of property-holders to make them extend their lines.

Q. As a matter of fact that was the way in which extensions were provided for?

A. The records show that extensions were granted, authorizing the Detroit city railway to build extensions on Gratiot, Michigan and Woodward avenues, and other lines.

Q. Don't the records also show that a large number of new lines were provided for in the same way?

585 A. The only one I now recall is the Brush Street and the Trumbull Avenue.

Q. Those were both granted in that way?

A. They were granted upon the petition of the corporation itself.

Q. It don't make any difference on whose petition, the common council passed an ordinance authorizing the city railway to build it?

A. In the same way they did any other company.

Q. And the Chene Street line was built in the same way?

A. That was built about the time of 1889 in connection with Congress street.

Q. But the common council continuously from time to time provided by ordinance for the extension of the system of the old Detroit city railway until it grew into its present system?

A. Ordinances were granted from time to time extending their tracks.

Q. The only new street-car lines outside of the lines of the old Detroit city railway, first is Fort Street and Elmwood line?

A. Yes, that has continued a separate corporation.

Q. That has continued a separate corporation to this day?

A. Yes.

Q. Then the next one in point of time was the Grand River?

A. Yes.

Q. And that continued a separate corporation until the Citizens' Co. was organized in 1891 or 1892?

A. That is my recollection of the fact.

Q. The Cass Avenue and Central Market lines and the Grand Trunk Junction line, otherwise known as the Baker Street
586 line, were also organized as independent companies?

A. Obtained franchises to themselves independently.

Q. But those lines passed first into the hands of the stockholders of the Citizens' Company, and after the ordinance of 1879 was passed, passed into the hands of the Detroit city railway?

A. That is as I have understood it, but I have no personal knowledge of the matter.

Q. You examined those records?

A. The records don't show that, Mr. Baker, except as to the Congress & Baker Street line and the Cass Avenue line; the records show that in 1879 it seems to have recognized the ownership in the Detroit city railway at that time.

Q. The ordinance of 1879 provides that these old companies, that they shall be consolidated with the Citizens' Company, or at any rate that they be operated under the ordinances of the Citizens' Company, and that they should file acceptances, which was done?

A. I don't remember that acceptance part, but it was provided that they should be operated——

Q. (Interrupting.) They were made a part of the city system?

A. Yes, of the Detroit city railway at that time.

Q. When you say that the common council never designated any extension to new lines, it is merely your legal opinion, the way you describe it, it wasn't a designation under the ordinance?

A. What I mean to say is that the common council never determined that a street-car line should be built to a certain street and then offered it to the city company.

Q. What did they do?

A. Either the Detroit city railway would come in and petition for a franchise covering a certain street or extension on cer-
587 tain streets, or some other individuals could come in and petition for a franchise for them, and the common council would take it up and grant a franchise either to the Detroit city railway or some other corporation to construct the road; that is what the proceedings show.

Q. Do you wish to be understood in your testimony then that that, in your judgment, wasn't a designation of a line?

A. That is, I don't care to put any construction on it; I only testify to what I find the records to be; I find no objection whatever to the granting by the city to the other corporations of street-car lines in the city of Detroit during all these years by the Detroit city railway.

Q. You have explained, haven't you, how that occurred in regard to Highland Park?

A. We simply went on and got a franchise the same as in any city.

Q. Before you did that you went to the Detroit City Company and

got an agreement with them that they would carry your passengers?

A. No, only a verbal understanding.

Q. They lived up to their verbal understanding?

A. They did not at first.

Q. But they did eventually?

A. No, not the verbal understanding we had before.

Q. You went to them and had an understanding with them that they would take your passengers and care for them and you would carry theirs?

A. We talked with them with reference to that, and they said, After you get your franchise and build your line, why, we will make some arrangement.

Q. Their line stopped at the Woodward Avenue Railroad crossing?

A. Yes, sir.

588 Q. You are interested as a property-owner out there?

A. Beyond the railroad crossing?

Q. Yes.

A. Yes.

Q. That company was organized by real-estate owners in Highland Park to build from the railroad out into the village of Highland Park?

A. Four of us organized the railroad company. I think one of them had no land out there at all; the others they had.

Q. And you wanted to build that road a little earlier than the city company was willing to build it?

A. I wasn't aware that the Detroit city railway had any idea of building it.

Q. They didn't indicate in any way that they desired to build it?

A. No.

Q. And they merely told you if you go on and build it they would make some proper arrangement with you about the fares?

A. Didn't say that; we went to them and asked them at the time. We first got the franchise in the township.

Q. Do you correct your testimony, you stated a few minutes ago that you first went to them to see what you could do with them?

A. No, I don't think I said first; I said before we obtained the franchise, but not until after we had got the franchise in the township, and petitioned the common council for this franchise, and then we went to them to know what arrangements we could make with them for the transfer of passengers, and they gave us a statement with reference to that verbally; we went on and completed our franchise with the city, constructed the road, and then made a contract with them.

589 Q. So that the road was actually built under their encouragement?

A. No, they discouraged it, tried to.

Q. What did they tell you?

A. Told us it would not pay.

Q. It didn't, did it, for years?

A. We didn't lose any money.
Q. I am talking about the operating of that road.
A. We didn't make any money.
Q. Until you sold it out?
A. I sold my interest before the stock was sold to the Citizens' Company.
Q. You sold out a little too soon?
A. Yes, a little too soon.
Q. I want to know whether or not it was a road that paid while you were connected with it.
A. Well, no, not any profit.
Q. So that it was run in the interest of you real-estate speculators?
A. We expected to make considerable money out of it.
Q. If you had stayed long enough you would?
A. I think if it had been operated as it should have been it would have made money.
Q. You say Mr. Miller's communication to the common council did not relate to the construction of any road by any other company, as I understood you, what did it relate to?
A. I can't understand the occurrence that prompted that communication.
Q. Were you here at that time?
A. Yes, 1877 I was here. The examination of the records don't show that there was anything that would prompt that communication to the common council.
Q. All that goes on in the city here don't appear on the journal of the common council?
590 A. Sometimes we read some of it in the newspapers.
Q. As far as you can judge that was just an idle communication, there wasn't anything to call it out?
A. I didn't say that.
Q. You have examined the records?
A. I have examined the records, but I don't find anything that would suggest a reason for it.
Q. You don't say there isn't one there, only you didn't find it?
A. I don't say anything about it.
Q. What was that communication talking about?
A. I think the communication would speak better; I don't want to tell from memory. I have read it today.
Q. You have been testifying about the records?
A. The communication was from Mr. Miller and the journal proceedings don't show why it was filed at that time.
Q. He was president of the old Detroit railway for years?
A. Yes; it called attention to what is claimed to be their construction of the ordinance.
Q. That was referred to the committee and the city counselor; who was city counselor then?
A. I think Mr. Holbrook.
Q. He gave an opinion in regard to it?
A. He made a report which was signed by the committee and himself.

Q. And those are all in evidence, I understand?
A. Yes, offered by the complainant.
Q. I think that is all from this witness.

Mr. HANCHETT:

Q. In relation to the ordinances granting the right to the Detroit city railway to extend its lines they were ordinances similar in form and adopted in like manner as ordinances granting like rights to other companies?

591 A. Precisely, obtained apparently in the same way, from the records.

Mr. BAKER: You don't mean that, do you, Mr. Corliss; they were all granted, weren't they, supplementary to the ordinances of 1862?

A. Oh, yes.

Mr. HATCH: The ordinances speak for themselves.

JOHN B. CORLISS.

Subscribed and sworn to before me this — day of November, A. D. 1895.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

Mr. BAKER: It is admitted by counsel on both sides that at the time the bill of complaint was filed in this cause, the Detroit Citizens' Street Railway Company was in the possession and was actually operating all of the street railway lines then in the city of Detroit, except that owned by the Fort Wayne & Belle Isle Railway Co., which was a cross-town line and that all other grants of every name and nature made in the city had passed to the Detroit Citizens' Co., or its assignees by purchase.

Mr. CORLISS: It is stipulated by counsel that the time for completing testimony shall be extended fifteen days.

EXHIBIT "6."

To the honorable the common council.

GENTLEMEN: The undersigned, Detroit railway, a corporation, hereby accept of the ordinance adopted by your honorable body, and approved by his honor, the mayor, on the 13th day of August, 1895, a copy of which is hereto attached, and hereby agrees

592 to comply with all the conditions, terms and obligations imposed by said ordinance, this acceptance being filed in accordance with section three thereof.

THE DETROIT RAILWAY,
By FORD STARRING,
Assistant Secretary.

August 15th, 1895.

An ordinance supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, and the amendments and supplements thereto, fixing and determining certain changes in the street railway routes, connections, and loop lines heretofore established, and authorizing the Detroit railway to establish, construct and operate street railways thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved
593 December 4, 1894, and the amendments and supplements thereto, consent, permission and authority are hereby granted to said the Detroit railway, its successors and assigns, to construct, maintain, use and operate street railway tracks in, along and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate railway cars thereon in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

A. In lieu of the double track heretofore authorized on Porter, Eighth, Abbott, Second, Howard and Cass streets, between Twenty-fourth street and Lafayette avenue, a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street; thence by a single loop-line track, one track extending easterly on Porter street to Second street; thence southerly on Second street to Lafayette avenue; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott; thence easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single-track loop line in, along and upon said streets.

Provided, that the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance, it is hereby authorized to build and own a single track and the poles and wires to be built and erected in Abbott street, from
594 Trumbull avenue to Michigan avenue; and the tracks and overhead construction on Abbott and Porter streets between Michigan and Trumbull avenues, shall be operated jointly by the two companies, without charge by either company to the other, on said portions of Abbott and Porter streets. Failure on the part of said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said tracks and overhead construction, in which case the other company may build and own all the tracks and overhead construction, on said portions of Porter and Abbott streets.

B. In lieu of the double tracks heretofore authorized on Macomb and Hastings streets, extending from Brush street to Catherine and Sherman streets, a single-track loop line shall be constructed, commencing at the intersection of Macomb and Brush streets, extending one track easterly on Macomb street to Russell street; thence northerly on Russell street to Catherine street, connecting with the track heretofore authorized thereon; and the other line commencing at Macomb and Brush streets; thence northerly on Brush street to Clinton street; thence easterly on Clinton street to Hastings street; thence northerly on Hastings street to Sherman street, connecting with the track heretofore authorized thereon, thereby forming a single-track loop line in, along and upon the streets mentioned.

SECTION 2. The powers and privileges and rights conferred and obligations imposed by this ordinance, shall be deemed a contract and continue to said grantees, their associates, successors and assigns, for the same period of thirty years as provided for in said original ordinance, approved December 4, 1891.

SECTION 3. This ordinance shall take effect when said grant-
595 ees shall file with the city clerk, a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

Approved August 13, 1895.

WM. RICHERT,
Acting Mayor.

Attest:

CHARLES R. FORSTER, *City Clerk.*

(Official papers please copy.)

EXHIBIT "7."

The Detroit Citizens' Street Railway Company, hereby accept all that portion of an ordinance entitled "An ordinance supplementary

to an ordinance entitled 'An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated,' approved December 4th, 1894, and the amendments and supplements thereto, fixing and determining certain changes in the street railway routes, connections and loop lines, heretofore established, and authorizing the Detroit railway to establish, construct and operate street railways thereon," approved August 13th, 1895, embraced in paragraph A, to wit:

"A. In lieu of the double track heretofore authorized on
596 Porter, Eighth, Abbott, Second, Howard and Cass streets, between Twenty-fourth street and Lafayette avenue a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street, thence by a single loop-line track, one track extending easterly on Porter street to Second street; thence southerly on Second street to Lafayette avenue; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott; thence easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single-track loop line, in, along and upon said streets.

"Provided, that the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance, *it* is hereby authorized to build and own a single track and the poles and wires to be built and erected in Abbott street, from Trumbull avenue to Michigan avenue; and the tracks and overhead construction on Abbott and Porter streets between Michigan and Trumbull avenues, shall be operated jointly by the two companies, without charge by either company to the other other on said portions of Abbott and Porter streets. Failure on the part of said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said track and overhead construction, in which case the other company may build and own all the tracks
and overhead construction, on said portions of Porter and
597 Abbott streets," it being the intentions of the undersigned to accept such ordinance, in so far as the same relates to it, the

Detroit Citizens' Street Railway Company, a copy of said ordinance being hereto attached, marked Exhibit "1," and made a part hereto.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
By J. C. HUTCHINS, *Vice-President.*

Dated August 14th, 1895.
[SEAL.]
Attest:
A. E. PETERS, *Secretary.*

An ordinance supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, and the amendments and supplements thereto, fixing and determining certain changes in the street railway routes, connections and loop lines heretofore established, and authorizing the Detroit railway to establish, construct and operate street railways thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements
598 of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated," approved December 4, 1894, and the amendments and supplements thereto, consent, permission and authority are hereby granted to said, the Detroit railway, its successors and assigns, to construct, maintain, use and operate street railway tracks in, along and through the following streets and avenues in the city of Detroit, and the same to keep, maintain and use, and to operate railway cars thereon in the manner and subject to the conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

A. In lieu of the double track heretofore authorized on Porter, Eighth, Abbott, Second, Howard and Cass streets, between Twenty-fourth street and Lafayette avenue, a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street; thence by a single loop-line track, one track extending easterly on Porter street to Second street; thence southerly on Second street to Lafayette avenue; thence easterly on Lafayette avenue, connecting

with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott; thence
599 easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single-track loop line in, along and upon said streets.

Provided, that the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance, it is hereby authorized to build and own a single track and the poles and wires to be built and erected in Abbott street, from Trumbull avenue to Michigan avenue; and the tracks and overhead construction on Abbott and Porter streets between Michigan and Trumbull avenues, shall be operated jointly by the two companies, without charge by either company to the other, on said portions of Abbott and Porter streets. Failure on the part of said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said tracks and overhead construction, in which case the other company may build and own all the tracks and overhead construction, on said portions of Porter and Abbott streets.

B. In lieu of the double tracks heretofore authorized on Macomb and Hastings streets, extending from Brush street to Catherine and Sherman streets, a single-track loop line shall be constructed, commencing at the intersection of Macomb and Brush streets, extending one track easterly on Macomb street to Russell street; thence northerly on Russell street to Catherine street, connecting with the track heretofore authorized thereon; and the other line commencing at Macomb and Brush streets; thence northerly on Brush street to Clinton street; thence easterly on Clinton street to Hastings street; thence northerly on Hastings street to Sherman street, connecting with the track heretofore authorized thereon, thereby
600 forming a single-track loop line in, along and upon the streets mentioned.

SECTION 2. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continue to said grantees, their associates, successors and assigns, for the same period of thirty years, as provided for in said original ordinance, approved December 4, 1894.

SEC. 3. This ordinance shall take effect when said grantees shall file with the city clerk a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

Approved August 13, 1895. WM. RICHERT,
Acting Mayor.

Attest:
CHARLES R. FORSTER, *City Clerk.*
(Official papers please copy.)

The Detroit Citizens' Street Railway Company hereby accepts and approves the ordinance of the common council of the city of Detroit, consenting to the use of its tracks on Michigan avenue by the Detroit railway, approved by the mayor of the city of Detroit, October 8th, 1895, a copy of which is hereto attached as a part of this acceptance and approval.

By order of the board of directors, October 12, 1895.

DETROIT CITIZENS' STREET RAILWAY COMPANY,

[SEAL.] By J. C. HUTCHINS, *Vice-President.*

Attest:

A. E. PETERS, *Secretary.*

601 EXHIBIT "8."

An ordinance supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereafter designated," approved December 4, 1894, and the ordinances amendatory thereof and supplementary thereto, fixing and determining certain changes in the street railway routes, connections and loop lines heretofore established and authorizing the Detroit railway to establish, construct and operate street railways thereon.

Whereas, the Detroit Citizens' Street Railway Company and the Detroit railway have entered into a contract whereby the Detroit railway has acquired the right upon certain conditions and subject to certain limitations in said contract expressed, to run and operate its cars on the north track of the said Detroit Citizens' Street Railway Company on Michigan avenue between Griswold street and Porter street and thence on Porter street to Second street, and on the south track of said Detroit Citizens' Street Railway Company on Michigan avenue between Griswold street and Abbott street, thence on Abbott street to Fourth street; and

Whereas, it is agreed in said contract as follows, viz: "This contract is not to become operative between the parties until an ordinance shall be adopted by the municipal authorities of the
602 city of Detroit and approved and accepted by both companies consenting to, the Detroit Company (meaning the Detroit railway) running its cars under the terms of this contract in manner aforesaid, and the said municipal authorities shall agree with the said Detroit Company (meaning the Detroit railway) that said company shall not construct its tracks on Lafayette avenue under its present ordinance until the common council shall declare that public necessity requires it, and shall further agree not to confer the

right to construct a line or lines of street railway upon Lafayette avenue during the term of the present franchises of the Detroit railway upon any other company."

Now, therefore, it is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to the provisions and requirements as to rate of fare of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereafter designated," approved December 4th, 1894, and the ordinances amendatory thereof and supplementary thereto, consent and authority is hereby given to the said the Detroit railway, its successors and assigns, to use the said tracks and electrical equipment of said Detroit Citizens' Street Railway Company on that portion of Michigan avenue, Porter street and Abbott street above described, and to operate its cars thereon, under and pursuant to the terms of said contract. Also, to connect the Detroit Company's lines of street railway on Rowland and Shelby streets by means of suitable curves with said tracks on Mich-
603 igan avenue. Also, to put in the necessary crossings from the west side of Griswold street to connect with the third track heretofore authorized to be constructed by said the Detroit railway upon Michigan avenue, east of Griswold street; or if the Detroit railway shall so elect, and the Detroit Citizens' Street Railway Company shall consent thereto, in lieu of putting in said crossings on Griswold street, it may operate its cars across Griswold street, and thence easterly on Michigan avenue, across Woodward avenue and upon Monroe avenue, upon the tracks of the Detroit Citizens' Street Railway Company upon said streets.

Provided, however, that this ordinance shall not be deemed to be a revocation of the rights hereto granted to the Detroit railway, its successors and assigns, to construct, maintain and operate lines of street railway upon Lafayette avenue and Second street and Fourth street; but the said Detroit railway shall not be required to construct said lines on Lafayette avenue and Fourth street and Second street until the common council shall by resolution declare that the public interests require it; and in the meantime and during the corporate existence of said the Detroit railway, it is understood and agreed that the municipal authorities of the city of Detroit shall not grant permission and authority to any other street railway company to construct such lines on Lafayette avenue and Second street and Fourth street.

SECTION 2. The powers, privileges and rights conferred, and the obligations imposed by this ordinance shall be deemed a contract, and continue to said the Detroit railway, its successors, associates and assigns, for the same period that said contract with the Detroit Citizens' Street Railway Company remains in force, to wit: thirty

years from December 4, 1894; and neither of the parties to this agreement, during the term of the grant of the Detroit
604 railway, shall do anything to disturb the free use by the others in the operation of any lines of cars over said jointly used track.

SECTION 3. This ordinance shall not take effect unless within five days after the adoption thereof the Detroit railway shall file with the city clerk a written acceptance thereof, and the Detroit Citizens' Street Railway Company, within the same time, shall file in writing with the city clerk its acceptance and approval of this ordinance. The bonds and other obligations of the Detroit railway filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

SECTION 4. This ordinance shall take immediate effect.

Approved October 8, 1895.

H. S. PINGREE, *Mayor.*

Attest:

CHARLES R. FORSTER, *City Clerk.*

(Official papers please copy.)

EXHIBIT "9."

DETROIT, MICH., *October 9th*, 1895.

To the city of Detroit:

The undersigned, the Detroit railway, a corporation, hereby accept of the ordinance and franchise adopted by the common council of the city of Detroit on the fourth day of October, 1895, and approved by his honor, the mayor, on the eighth day of October, 1895, a copy of which ordinance is hereto attached, under which ordinance the undersigned is granted the right to maintain and operate its street-car lines through Michigan avenue, etc., and
605 hereby agree to comply with and faithfully perform the terms, conditions and obligations imposed by said ordinance.

In witness whereof, the said, the Detroit railway, has hereunto caused its official seal, to be affixed and this acceptance to be subscribed by its duly authorized officers, this 9th day of October, A. D. 1895.

(Signed) THE DETROIT RAILWAY,
By H. A. EVERETT,
Vice-President.

By FORD STARRING,
Assistant Secretary.

An ordinance supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and such other streets, avenues and public places as may be hereafter designated," approved December 4, 1894, and the ordinances amendatory thereof and supplementary thereto, fixing and determining certain changes in the street railway routes, connections and loop lines heretofore established and authorizing the Detroit railway to establish, construct and operate street railways thereon.

Whereas, the Detroit Citizens' Street Railway Company and the Detroit railway have entered into a contract whereby the Detroit railway has acquired the right upon certain conditions and subject to certain limitations in said contract expressed, to run and operate its cars on the north track of the said Detroit Citizens' Street Railway Company on Michigan avenue between Griswold street
606 and Porter street and thence on Porter street to Second street, and on the south track of said Detroit Citizens' Street Railway Company on Michigan avenue between Griswold street and Abbott street, thence on Abbott street to Fourth street; and

Whereas, it is agreed in said contract as follows, viz: "This contract is not to become operative between the parties until an ordinance shall be adopted by the municipal authorities of the city of Detroit and approved and accepted by both companies consenting to, the Detroit Company (meaning the Detroit railway) running its cars under the terms of this contract in manner aforesaid, and the said municipal authorities shall agree with the said Detroit Company (meaning the Detroit railway) that said company shall not construct its tracks on Lafayette avenue under its present ordinance until the common council shall declare that public necessity requires it, and shall further agree not to confer the right to construct a line or lines of street railway upon Lafayette avenue during the term of the present franchises of the Detroit railway upon any other company."

Now, therefore, it is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to the provisions and requirements as to rate of fare of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain and operate street railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereafter designated," approved December

4th, 1894, and the ordinances amendatory thereof and supple-
607 mentary thereto, consent and authority is hereby given to the said the Detroit railway, its successors and assigns, to use the said tracks and electrical equipment of said Detroit Citizens' Street Railway Company on that portion of Michigan avenue, Porter street and Abbott street above described, and to operate its cars thereon, under and pursuant to the terms of said contract. Also, to connect the Detroit company's lines of street railway on Rowland and Shelby streets by means of suitable curves with said tracks on Michigan avenue. Also, to put in the necessary crossings from the west side of Griswold street to connect with the third track heretofore authorized to be constructed by said the Detroit railway upon Michigan avenue, east of Griswold street; or if the Detroit railway shall so elect, and the Detroit Citizens' Street Railway Company shall consent thereto, in lieu of putting in said crossings on Griswold street, it may operate its cars across Griswold street, and thence easterly on Michigan avenue, across Woodward avenue and upon Monroe avenue, upon the track of the Detroit Citizens' Street Railway Company upon said streets.

Provided, however, that this ordinance shall not be deemed to be a revocation of the rights heretofore granted to the Detroit railway, its successors and assigns, to construct, maintain and operate lines of street railway upon Lafayette avenue and Second street and Fourth street; but the said Detroit railway shall not be required to construct said lines on Lafayette avenue and Fourth street and Second street until the common council shall by resolution declare that the public interests require it; and in the meantime and during the corporate existence of said the Detroit railway, it is understood and agreed that the municipal authorities of the city of Detroit shall
608 not grant permission and authority to any other street railway company to construct such lines on Lafayette avenue and Second street and Fourth street.

SECTION 2. The powers, privileges and rights conferred, and the obligations imposed by this ordinance shall be deemed a contract, and continue to said the Detroit railway, its successors, associates and assigns, for the same period that said contract with the Detroit Citizens' Street Railway Company remains in force, to wit: thirty years from December 4, 1894; and neither of the parties to this agreement, during the term of the grant of the Detroit railway, shall do anything to disturb the free use by the others in the operation of any lines of cars over said jointly used track.

SECTION 3. This ordinance shall not take effect unless within five days after the adoption thereof the Detroit railway shall file with the city clerk a written acceptance thereof, and the Detroit Citizens' Street Railway Company, within the same time, shall file in writing with the city clerk its acceptance and approval of this ordinance. The bonds and other obligations of the Detroit railway filed in connection with the original ordinance shall be held as a further condition for the faithful performance of the terms of this ordinance.

SECTION 4. This ordinance shall take immediate effect.
Approved October 8, 1895.

H. S. PINGREE, *Mayor.*

Attest:
CHARLES R. FORSTER, *City Clerk.*

(Official papers please copy.)

609 EXHIBIT "10."

From proceedings of Journal Proceedings of 1863, p. 150.

An ordinance regulating the construction and use of the tracks of the Detroit city railway.

It is hereby ordained by the common council of the city of Detroit as follows:

SECTION 1. Permission is hereby given to the Detroit railway to build its road and track on Michigan avenue, from Woodward avenue to Fort street, and on Gratiot street from Woodward avenue to Russell street, instead and in lieu of upon Third street and Fort street, "as provided by the ordinance approved November 24, 1862, and the amendments thereto (and such building on Michigan avenue and Gratiot street, together with Jefferson and Woodward avenues, shall be deemed a compliance with the condition of deposit mentioned in section 21 of said ordinance).

SEC. 2. As a condition of the acceptance of this permission, the said Detroit railway may, and shall, complete its road and track on Fort street, Michigan avenue and Gratiot street, as provided by the aforesaid ordinance, by the first day of October, 1864, and failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed.

SEC. 3. On Woodward avenue, Gratiot street and Michigan avenue, beyond the pavement the said railway may build its tracks a sufficient distance from the plank road in those streets, respectively, to leave the grade track of said plank road clear and allow teams and vehicles to pass between said track and said plank road, and upon Michigan avenue and Gratiot street, beyond the pavement, said railway may construct its track with the "T" rail, which
610 is used for street railways, and weighs not less than 33 pounds to the yard.

SEC. 4. The said railway is hereby authorized to extend its track and run its cars through Third street, southerly from Woodbridge street to the dock, and to lay the said track on such parts of said street, westerly of the center, as they shall agree upon with the Michigan Central Railroad Company.

SEC. 5. The tracks upon Jefferson avenue, Woodward avenue, Michigan avenue and Gratiot street shall each be considered and run as one route, and subject its passengers to the payment of a single fare each, provided, however, that all cars running north of Jefferson avenue shall run to and from Jefferson avenue, and that portion of Woodward avenue between Jefferson avenue and the

routes intersecting Woodward avenue shall be considered as making a portion of each of said routes respectively.

SEC. 6. The Detroit city railway, upon obtaining the consent of the owners of real estate on Elmwood avenue, or such real-estate owners as are affected thereby, may, and is hereby authorized to build a track, from its present track on Jefferson avenue, to Elmwood cemetery, and run its cars thereon at such times as will accommodate the public, provided, however, no person shall be charged more than one cent either way on this track, and said railway are also authorized to run a track and their cars to Mount Elliott cemetery, along Mt. Elliott avenue, and charge the same rate of fare as to the said Elmwood cemetery.

Approved August 19, 1863.

FRANCIS B. PHELPS,
Acting Mayor.

Attest:
FRANCIS PRAMSTALLER, *City Clerk.*

Daily Michigan Volksblatt please copy and charge the city.

611 EXHIBIT "11."

From Proceedings of Common Council for 1864, p. 169.

CITY OF DETROIT,
MAYOR'S OFFICE, *September* 27, 1864.

To the honorable the common council.

GENTLEMEN: The ordinance passed at your last session granting certain rights and privileges to the Detroit city railway I return without my approval.

The first, second and fourth sections of said ordinance are correct and proper, and if they stood alone I would approve of same.

The original ordinance under which the street railway company were authorized to construct a railway on Fort street from the west line of the city to Third street was passed now nearly two years ago.

The amendment by which the company were authorized to extend the railway to Campus Martius was passed in the last year, and approved by my predecessor.

There has been heretofore ample time for the present company to have completed the construction of the railway upon that street, as it was bound to do in consideration of the privilege granted it.

In the meantime for now two seasons the street has remained unimproved and unpaved, because the citizens upon it have not known what was to be the action of the street railway company.

The general wish has been, I believe, to have the street paved with the Nicholson pavement, making a smooth, easy and durable road. The uncertainty as to the future of the street and as to the construction of the railway upon it, and of the mode in which the surface of the street shall be constructed, in case the railway shall be built, have rendered it impossible to adopt any plans for
612 its improvement, until the street has at times become almost impassable, and instead of being one of the best constructed,

as it should be, has become the worst street in the city. This state of things, it is clear, will continue as long as there remains the power and the right to construct a railway there, and the will and the ability to do so is wanting.

There is and can be no necessity for this state of things, and it ought not to be permitted to exist, and I have therefore felt compelled to withhold my approval from this ordinance.

The privilege of constructing a railway in that street is doubtless valuable, and there can be no difficulty in procuring it to be done at any time, but the power and the right to construct it ought not to be continued in any one company for one, two or three years, to the exclusion of all others, when that company is either unwilling or unable to build it, and thus standing in the way of all progress and improvement upon the street in the meantime.

Against such a grant of power, as is well known, the citizens upon that street have remonstrated almost unanimously and when the inconveniences and detriment to the public interest are so great, by its continuance as is authorized by this ordinance, I cannot but feel it a clear duty to withhold my approval.

In so doing, I may add that whatever may be my personal opinion, or wishes upon the subject of the proposed railway, whenever parties shall ask the privilege of constructing it who are both willing and able to do it without delay and thus occasion no unnecessary inconvenience, in this case I am guided solely by the reasons above stated.

It will be in the power of the common council at any time when parties are prepared and ready to construct the railway, at
613 that time to grant the right, if it shall then be deemed best for the public interest.

It is due to itself and is a part of its duty to the public, until that time, to retain and exercise full control over the street and when it parts with that control to any extent it should be in such a way and with such restrictions and provisions as will secure the least possible inconvenience.

Very respectfully, K. C. BARKER, *Mayor.*

On motion the vote by which the ordinance was passed was reconsidered.

EXHIBIT "12."

From Proceedings of Common Council of 1864, page 172.

By Ald. Bond:

Of F. Buhl and ten others, asking that an ordinance be passed constituting them, or such persons as they shall designate, a company for constructing and maintaining a railway, and running cars upon the same by horse-power, extending from Woodward avenue down Fort street to the west line of the city, etc.

On motion, Ald. Bond referred to a special committee of three, of which the chairman of the committee on streets should be one.

The chair appointed Ald. Gies, Bond and Sheley as such committee.

EXHIBIT "13."

Report from Special Committee.

From Proceedings of Common Council of 1864, page 204.

To the honorable the common council:

The undersigned, the special committee to whom was referred the petition of Frederick Buhl, Peter Henkel and others,
614 asking the privilege of constructing a street railway from the western limits of the city through Fort street to Woodward avenue; and the further petition of C. I. Walker, attorney for the same petitioners, asking, in their behalf, that the further privilege of extending said railway through Michigan avenue to Elmwood avenue, by such route as should be determined by the common council, respectfully report, that they have carefully and fully considered the said petitions and unanimously recommend that the prayer of said petitioners be granted under the following provisions and limitations, viz: That they be authorized to construct a street railway from the western limits of the city through Fort street to and across Woodward avenue, along the southerly side of Michigan avenue to Randolph street, up Randolph street, and to Elmwood avenue either through Lafayette or Croghan streets; or through Lafayette or Croghan street to St. Aubin street, thence through St. Aubin street to Clinton avenue, and through Clinton avenue to Elmwood avenue, as said petitioners, their associates and successors, may determine; said railway, when completed, to constitute a single route and to convey passengers the whole distance or any portion thereof for a single fare, and to be constructed, regulated and operated under the same general provisions and limitations of power, and subject to the same duties and restrictions as are already provided by the city ordinances in relation to the railways now in operation in this city, as far as the same can be made applicable to such railway.

And your committee further recommend that the said petitioners, their associates and successors, be required to complete said railway through Fort street by the first day of July, 1865, and the remainder of the distance by the 1st day of August, 1866, and that the city counselor be required to prepare an ordinance to be presented to the next session of the common council, to carry into effect the
615 purpose of this report, and to provide securities for the construction of said railway, according to the provisions of such ordinance.

Your committee the more readily and heartily make this report in favor of the prayer of said petitioners, for the reason that said petitioners are residents and large tax-payers, are deeply interested in the construction of said railway, and are possessed of ample means to insure its construction.

The route is one that will greatly promote the public convenience, passing, as it does, through the very heart of the city, and for a

greater portion of the way in the midst of a laboring population, who need the facilities of so cheap a communication.

They leave the selection of the upper part of the route to the company, who are to construct the railway, for very obvious reasons. Neither Lafayette nor Croghan street is yet open all of the way to Elmwood avenue, and unless the company can make proper arrangements with the proprietors owning lands where said streets are not yet opened, it may be necessary for the company to follow the route indicated through St. Aubin street and Clinton avenue, and in selecting between the several routes the interests of the company and the interest of the public are identical, for the company will desire to select such a route as will command the largest amount of travel, and, for that reason, produce the largest return, while the public will be best accommodated by that route, which will command the greatest number of passengers.

All of which is respectfully submitted.

PAUL GIES.
WILLIAM S. BOND.
A. SHELEY.

616 Accepted, whereupon Ald. Bond moved the adoption of the report.

Ald. Cicott moved to amend by laying the report on the table for one week.

The president, leaving the chair, called Ald. O'Grady thereto.

The question being on the motion of Cicott, the same was lost by the following vote:

Yeas—Ald. Cahoon, Cicott, Elwood, McGonegal, Meldrum, president—6.

Nays—Ald. Bond, Brooks, Field, Frost, Gallagher, Gies, Knight, Lafferty, McGinnis, Purcell, Sheley, Weir—12.

The president, Hon. S. Dow Elwood, resumed his seat.

The question recurring on the motion of Ald. Bond, the same was carried by the following vote:

Yeas—Ald. Bond, Brooks, Field, Frost, Gallagher, Gies, Knight, Lafferty, McGinnis, McGonegal, O'Grady, Purcell, Sheley, Weir—14.

Nays—Ald. Cahoon, Cicott, Meldrum—3.

EXHIBIT "14."

From Proceedings of Common Council of 1864, pages 236, 237.

Communications from City Officers.

From the mayor.

DETROIT, *January* 24, 1865.

To the honorable the common council.

GENTLEMEN: The ordinance passed at the last session of your honorable body to establish a street railway to be known as the "Fort Street & Elmwood Avenue railway," I have carefully ex-

amined but regret that it has so many objectionable features as to place it wholly out of my power to return it with my approval.

617 No man, or body of men, in this community, favor public improvements of every description more than I do, and among such improvements none, ordinarily, will receive my approval more cheerfully and promptly than street railways.

In advocating a great public improvement, however, we should not only consider its utility, and the blessings it may bestow upon the community at large, but the inconveniences and disadvantages it may bring in its train, and whether such inconveniences and disadvantages do not very much outweigh all other considerations. We should, in our legislation keep in view the growth, the necessities and wants of the city, and particularly when we propose to give chartered rights to corporations for a long period of years.

What may seem plausible, and no inconvenience for the present, may become intolerable before the expiration of these granted privileges.

My first objection to the ordinance is the permanent nuisance that a railway track would create from the terminus of Fort street at Woodward avenue, to Michigan avenue. To reach Michigan avenue from this point it will be necessary to lay the track diagonally across Woodward avenue towards the city hall, crossing two sidewalks in its course, and making a circuitous route to Michigan avenue. The construction of such a track would require an entire reconstruction of the present grade, and at a very large expense. Another and a very serious one is the obstruction of Michigan avenue from the Campus Martius to Randolph street by a street railway track. The width of the street at present is scarcely sufficient for the wants of the public, and it must be apparent to you that a track at this time would be a great inconvenience, and with the growth of our city, a few years from now it would become intolerable.

618 Probably for all time to come this will be the locality for the principal market of this city, and we should be very cautious not to permit any parties or corporation to monopolize this locality at the expense of the public.

I am compelled to withhold my approval of this ordinance from another consideration, which must have escaped your notice.

You are aware of the many complaints and just causes of action against the city that have already arisen from the construction of street railways on unpaved streets, and I cannot consistently approve of an ordinance to build roads on streets unpaved, and particularly as in the case of Croghan street, being only thirty-two feet from curb to curb, and the ordinance giving the corporation control of nearly ten feet, leaving a carriageway of but eleven feet, including the gutter, on each side. Such a road would, for several months in the year, render said street impassable for ordinary teams and vehicles having business on the street. This ordinance also proposes to lay a track on Fort street, a large portion of which is unpaved, and of a clay soil, almost impassable several months in the

year. A railway track would, in my opinion, seriously obstruct the necessary and ordinary travel.

I deem it proper to call your attention to one very important feature of the ordinance which relates to the revenue the city is to receive from said railway.

The specific tax or license is $25 per car after five years. To construct and equip the proposed road it will require an investment of $150,000. Ordinarily this would, if invested in other business or property, pay a city tax of about $3,000 per annum instead of $250. The aggregate amount of the tax upon ten cars is probably all that the company would require or use.

At present much just dissatisfaction is felt among the tax-
619 paying citizens of Detroit (who are levied upon almost to the full extent of their income), relative to exempting the property of railroad corporations from taxation.

We now have in this city about $4,000,000 of real estate and other property belonging to railway companies and other corporations which, by a special law, is wholly exempt from any species of city tax.

It is not wise or just legislation to permit property practically exempt from taxation to accumulate in a time like the present, when our taxes are constantly being augmented by other causes over which we have no control.

All of these corporations are created and maintained for the profit and benefit of stockholders, and as they enjoy fully all of the advantages and protection of the city government, it is but just that they, equally with others, should contribute toward the cost of maintaining it. It is not right to first grant to the corporation the exclusive use of certain streets and then add to that liberality by exempting them from taxation for five years, and after that to require of them only about one-twelfth of the taxes paid by individuals owning an equal amount of property.

Prudence and foresight, wise, careful and sound financial policy dictate different legislation from that which characterizes the ordinance in this matter of taxation.

Before the persons named as associates in the company to whom you have granted railway franchises, sent their application to you for same, a petition was in the hands of your committee on streets, signed by gentlemen of acknowledged wealth and standing, asking permission to build a road from the western limits of the city to Elmwood avenue, passing through Lafayette street from Eighth, thence up Monroe avenue, and so on to the easterly terminus.

620 The proposition of these men, I understand, was not reported upon, or first considered by the committee on streets, because the parties interested were non-resident. Whether this was the fact or not, I cannot comprehend how the committee could have justified their action in reporting upon one petition whilst another of prior date and of a *bona fide* character was actually before them.

I trust that personal prejudice or sectional strife will not influence you in your action upon the matter under consideration, and that

your legislation upon this, as well as all other subjects, may be characterized by fairness and a due regard for the interests of all.

Very respectfully, K. C. BARKER, *Mayor.*

Accepted, and on motion the vote by which the ordinance was passed was reconsidered.

The question then being put, "Shall the ordinance pass over the mayor's veto," the same was carried by the following vote:

Yeas—Ald. Bond, Brodie, Campau, Codd, Field, Gallagher, Gies, Henkel, Knight, McGinnis, McGonegal, Meginnity, Sheley, St. Aubin, Meldrum, Purcell and Weir—17.

Nays—Ald. Brooks and the president—2.

The following communication was, after leave being granted, presented to and accepted by the council, before final action was taken on the passage of the ordinance:

In behalf of the grantees under the street railway ordinance now pending before the common council of the city of Detroit, I hereby stipulate and agree that if said ordinance is passed, that said grantees will accept an amendatory ordinance, providing that if Croghan street or any portion thereof is paved contemporaneously with
621 the laying of the track, the railway company shall, at their own expense, pave their tracks, and for two feet and four inches on either side thereof.

C. I. WALKER,
Attorney for Grantees.

EXHIBIT "15."

From vols. 63 and 64, Proceedings of Common Council of 1865, pages 266, 267.

An ordinance to permit certain persons to establish, locate and operate a street railway in and through certain streets of the city of Detroit.

Whereas, Frederick Buhl, John P. Clark, Eber B. Ward, their associates, successors and assigns, propose to organize as a body politic and corporate, under the "act to provide for the construction of tram railways," approved February 13th, 1855, Laws of 1855, page 388, and act or acts amendatory thereto, for the purpose of constructing and operating through the streets of the city of Detroit, a city or street railway to be known as the "Fort Street and Elmwood Avenue railway;" therefore, it is hereby ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in Frederick Buhl and his associates, who may be approved by the common council, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets of, and bridges in, the city of Detroit, hereinafter mentioned, and the

same to keep, maintain and use and to operate thereon rail-
622 way cars and carriages, during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance.

SEC. 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate a street railway, as herein provided, upon the following route: Commencing at the present westerly limits of the city of Detroit, where Fort street touches and intersects the said westerly limits; thence easterly through Fort street to Woodward avenue; thence across Woodward avenue, and along the southerly side of Michigan avenue, to Randolph street; thence up Randolph street, and from said Randolph street to Elmwood avenue, through Croghan street the whole distance to said Elmwood avenue, provided said street can be opened without expense to the city; otherwise, through Croghan street to St. Aubin street; and thence through St. Aubin street to Clinton avenue; and thence through Clinton avenue to Elmwood avenue; and thence through said Elmwood avenue to the gate of Elmwood cemetery.

SEC. 3. The railway through said streets shall be laid in the center thereof, if on a single track; and if on a double track, the inside rail of each track shall be laid a sufficient distance from the center of the street to enable two cars to pass on opposite tracks, and leave a space of at least eighteen inches; and the gauge of the track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels; provided, however, that where a double track shall not be laid in the first instance, and a second track shall afterwards be required, such second track may be laid upon either side of the first; and provided, further, that in all streets which are not paved, or where plank roads are laid, the track of said railway may be laid elsewhere than in the center
thereof, as may be most convenient, under the direction of
623 the common council, and shall least obstruct the public travel thereon. When the grantees shall complete one track of said railway, and place cars thereon for public use, they may, at any time thereafter, within five years, build a second track, so that they do not interrupt the running of their cars on the first completed track; provided, the consent of the common council is first obtained.

SEC. 4. The track of said railway shall be laid of such rails as are now laid in Woodward avenue, and as shall least obstruct the free passage of vehicles or carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grade thereof as now established, or as they shall from time to time be established or altered; and in case of grading, paving, or otherwise, if it be necessary to relay said rails, the same shall be done at the expense of the grantees; and in all streets, or parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and shall be authorized and approved by the city surveyor. The grantees and their assigns shall be required to keep the surface of the streets inside the rails, and for two feet four inches outside thereof, in good order, and repair, and all snow, ice, dirt and filth

cleared and removed from the same, in such a manner as will not obstruct the passage of said streets, at the expense of the grantees; provided, however, that upon the paved portions of said streets the materials for repaving shall be supplied at the expense of the city.

SEC. 5. The route of said railway shall commence at that point on Fort street where said street intersects the westerly limits of the city of Detroit; from thence running to Elmwood avenue on the course set forth in section two of this ordinance; and in collecting fare the whole of said distance shall be deemed but one route; and
624 each passenger traveling the same continuously over the whole or any portion thereof, shall pay only one fare, the amount of which fare shall be five cents.

SEC. 6. Said railway shall be completed from the western limits of the city to Woodward avenue, on on before the first day of August, A. D. 1865, and the remainder thereof from Woodward avenue to Elmwood avenue on or before the first day of July, A. D. 1866.

SEC. 7. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the common council shall prescribe; provided, always, that said council will not require them to run regular cars oftener than once in fifteen minutes, during sixteen hours every day, from the fifteenth day of April to the fifteenth day of October; and fourteen hours every day from the fifteenth day of October to the fifteenth day of April; and the cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage; and the cars and carriages for that purpose shall be of the best style in use on said railways; provided that other cars and carriages may be used for constructing and repairing said railway tracks, and for cleaning the same from obstructions by snow or otherwise.

SEC. 8. The rate of fare for any distance shall not exceed five cents in any one car, on said route, except when cars or carriages shall be chartered for specific purposes; provided, cars so chartered shall be so designated by placards, and shall not be considered regular cars within the meaning of the preceding section.

SEC. 9. Cars drawn in the same direction shall not approach within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting two cars together.

625 SEC. 10. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision, or prevent danger to persons or property in the street.

SEC. 11. When the conductor of any car is required to stop at the intersection of streets, to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 12. The grantees or their assigns shall employ careful, sober and prudent agents, conductors and drivers, to take charge of their cars while on the road; and it shall be the duty of all such agents,

conductors and drivers to keep vigilant watch for all trains, carriages or persons on foot, and especially children, either upon the track or moving towards it. At the first appearance of danger to such teams, carriages, footmen or children, or other obstructions, the cars shall be stopped in the shortest time and space possible, and the drivers shall be provided with a whistle for the purpose of sounding the alarm in case of danger.

SEC. 13. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SEC. 14. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

SEC. 15. The cars shall at all times be entitled to the track, and any vehicles upon the track shall turn out when any car comes up, so as to leave the track unobstructed; and the driver of any vehicle refusing to do so, shall be liable to a fine not exceeding ten dollars, on conviction before the recorder's court of said city of Detroit; but costs of prosecution shall not be at the expense of the city; provided, however, that the steam fire-engine shall always have the right of the track on unpaved streets, when going to a fire.

626 SEC. 16. The cars, after sunset, shall be provided with colored signal lights—a red light in front, and a green light in rear.

SEC. 17. Wherever gas or water pipes or sewers are now laid in the streets herein specified, and through which said railway is to pass, the said railway must be laid down and maintained, subject to the right now in the city, and the gas company and the sewer and water commissioners to take up or remove said pipes or sewers in such a manner as not unnecessarily to damage or injure said railway or its use, without claim against said city, gas company, or water or sewer commissioners; and the common council expressly reserves to itself the right hereafter to lay down, or permit to be laid down, and repaired in said streets, gas or water pipes and sewers, and pave said streets, whenever the common council shall so direct by resolution; the said gas or water companies, or private individuals who shall take up pavement for the purpose aforesaid, being always required, as by the present city ordinance, to restore the pavement in the streets to its former condition.

SEC. 18. If said grantees or their assigns shall fail to complete said railway, or any portion thereof, within the time prescribed by this ordinance, then the rights and privileges herein granted, shall be forfeited as to the whole of said route herein established, and the city shall be entitled to take possession thereof, provided the council does not extend the time; provided, that if said grantees shall be delayed by the order of injunction of any court, and said order or injunction shall not have been obtained at the instance or by the connivance of said grantees, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SEC. 19. It is hereby reserved to the common council of the
627 city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed necessary

to protect the interest, safety, welfare or accommodation of the public in relation to said railways.

SEC. 20. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

SEC. 21. Said grantees shall, on or before the first day of March, A. D. 1865, deposit with the controller of said city the sum of five thousand dollars in money or in United States stocks, or in treasury notes bearing seven and three-tenths per cent. interest, which deposit shall be security for the completion by said grantees of said line of railway, which they are required to construct and complete on or before the time herein mentioned for the completion of the same, and if the said railway shall not then be completed the sum so deposited shall be forfeited to the city.

SEC. 22. The said grantees and their assigns shall pay to the treasurer of the city of Detroit, annually, twenty-five dollars on each and every passenger and other car, excepting only those cars used for constructing, repairing and cleaning the track on said road, to be collected as a license for the use of the city, after the term of five years from and after this date.

SEC. 23. Whenever said grantees, their successors or assigns shall have organized themselves into a body politic and corporate, under said act of the legislature of the State of Michigan, and the amendment or amendments thereto, all the powers and privileges granted and conferred to and upon them by this ordinance, shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

SEC. 24. No railway shall hereafter be built on and along
628 the streets occupied by the railway herein provided for, for a greater distance than three blocks, at any one place, without the consent of the grantees and their successors.

SEC. 25. The rails of said street railway shall be laid on a foundation equal to that of Woodward avenue, or any other first-class railroad.

SEC. 26. All ordinances or parts of ordinances heretofore made, ordained and passed, inconsistent with the provisions of this ordinance are hereby repealed.

Passed over the veto of the mayor, January 31, 1865, by the following vote:

Yeas—Ald. Bond, Brodie, Campau, Codd, Field, Gallagher, Gies, Henkel, Knight, McGinnis, McGonegal, Meginnity, Meldrum, Purcell, Sheley, St. Aubin, Weir—17.

Nays—Ald. Brooks, president—2.

FRANCIS PRAMSTALLER, *City Clerk.*

EXHIBIT "16."

From Proceedings of Common Council of 1865, 1866, page 4.

By Ald. Gies:

Resolved, That the city counselor and attorney be, and they are hereby directed to report to the council, at its next meeting, whether the city street railroad company has complied with the ordinance in regard to the completion of their several routes.

Adopted.

629 EXHIBIT "17."

From Proceedings of Common Council of 1865, 1866, page 6.

From the city attorney and counselor.

APRIL 11, 1865.

To the honorable the common council.

GENTLEMEN: In compliance with a resolution offered and adopted at your last session, concerning the progress of the street railroad company, in complying with the requirements of the ordinance relative to the completion of their several routes, the undersigned respectfully report that nothing has been done upon the Gratiot street beyond or east of Dequindre street, and upon Grand River no work whatever has been commenced.

Very respectfully,

WM. GRAY,
City Counselor.

T. H. HARTWELL,
City Attorney.

Accepted and placed on file.

EXHIBIT "18."

From Proceedings of Common Council of 1865, 1866, page 41.

Eighth ward.

By Ald. Gallagher:

Resolved, That the city counselor be and is hereby directed to report to this council whether the Detroit City Railroad Company is entitled to run their cars on any of the streets where railroads are constructed by not complying with the ordinances in regard of the construction of a railway on Grand River street.

Adopted.

630 EXHIBIT "19."

From Proceedings of Common Council of 1865, 1866, page 43.

To the honorable the common council:

The undersigned, to whom the question was referred, respectfully reports: That, by section 18, of the street railway ordinance,

grantees therein named forfeits the rights granted in respect to each route not commenced and completed within the time prescribed, but the non-completion of the Grand River Street route does not work a forfeiture of the right of the company to run and operate their cars upon other routes when the road is completed; it merely forfeits their rights in and to the Grand River Street route.

Respectfully, WM. GRAY.

May 21, 1861.

Accepted and placed on file.

EXHIBIT "20."

From Proceedings of Common Council of 1865, 1866, page 46.

Eighth ward.

By Ald. Purcell:

Resolved, That the city counselor be, and he is hereby requested to report to the council as soon as convenient, whether the failure of the Detroit City Railway Company to complete the road on Grand River street within the time specified by their charter, give to this council the authority to grant to any other company power to build, maintain and operate a railroad on said street from the west-
631 ern limits of said street to Woodward avenue, and on Woodward avenue south to its junction with Jefferson avenue.

Adopted.

EXHIBIT "21."

From Proceedings of Common Council 1865, 1866, page 60.

From the city counselor.

To the honorable the common council:

In compliance with your resolution of May 29th, I respectfully report:

The city railway company was required to complete a road on and through Grand River street by the 31st of March, 1863.

Ordinances, p. 201, sec. 6.

The company having failed to do, all rights granted in reference to said route are forfeited.

Ordinances, p. 203, sec. 8.

That portion of Woodward avenue which lies between Grand River street and Jefferson avenue is a portion of this route.

Ordinances, p. 206, sec. 5.

The rights of the present company in reference to this route being forfeited, I am of opinion that the council can now give authority to any other company or persons to build a railway on and through

Grand River street from the western limits to Woodward avenue and thence on and through Woodward avenue to Jefferson avenue.

Respectfully, WM. GRAY.

June 6, 1865.
Accepted and adopted.

632 EXHIBIT "22."

From Proceedings of Common Council 1865, 1866, page 63.

Eighth ward.

By Ald. Gallagher:

Resolved, That this council do hold out inducements unto some responsible parties for the construction of a street railway from the corner of Jefferson and Woodward avenues, along Woodward avenue as far as Grand River street, thence up Grand River street unto the western limits of the city, as the present corporation refuses for to construct said route according to said ordinance granted to said corporation.

Adopted.

EXHIBIT "23."

From Proceedings of Common Council of 1865, page 17.

Otto P. Mansfield and others, for permission to erect street railway up Woodward avenue and through Grand River street to the line of the Michigan Southern railroad.

Referred to the committee on street railways, and the city attorney, to bring in ordinance.

By Ald. Considine.

EXHIBIT "24."

From Proceedings of Common Council of 1868, pages 44, 45, 46.

An ordinance to permit certain parties to establish, locate and operate street railways in and through certain streets of the city of Detroit.

It is hereby ordained by the common council of the city of Detroit:

633 Whereas, Nathaniel Prouty, Moses F. Dickenson, William B. Wesson, Harvey King and James P. Mansfield, their associates, successors and assigns, propose to organize as a body politic and corporate, under a charter from the legislature of Michigan, or under the "act to provide for the construction of train railways," approved February 13, 1855 (Laws of 1855, p. 338), for the purpose of constructing and operating in and through the streets of the city of Detroit; therefore,

Be it ordained by the common council of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in the said Nathaniel Prouty, Moses

F. Dickenson, William B. Wesson, Harvey King, James P. Mansfield, their associates, successors and assigns, organized into a corporation under the laws of the State of Michigan as aforesaid, to lay a single or double track for a railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along the course of the streets and bridges in the city of Detroit hereinafter mentioned, and the same to keep, maintain and use and to operate thereon railway cars and carriages during all the term hereinafter specified and prescribed, and in the manner and upon the conditions set forth in the ordinance; provided, that nothing therein contained shall be construed to interfere with the legal rights of any of the plank roads running into the city of Detroit.

SEC. 2. The said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue from said last-named avenue to its intersection with Grand River street, and from thence on and through said Grand River street to the point of intersection with the railway tracks of the Michigan Southern & Detroit, Monroe & Toledo railway tracks. And also on
634 and through any other street or streets running between the western terminus above specified and Woodward avenue, from said Grand River street to the Detroit river, as the common council shall by resolution designate: Provided, that there shall not be at any time more than two parallel street railway tracks on Woodward avenue.

SEC. 3. All railways built, constructed, or maintained under the provisions of this ordinance shall be laid in the center of any and each street wherein the same are built, constructed or maintained (save upon Woodward avenue) if on a single track; and if on a double track, the inside rail of each track shall be laid within two feet and four inches of the center of the street; the said rails shall be laid four feet and eight inches apart, so as to accommodate the most common width of carriage wheels: Provided, nevertheless, that in all streets which are not paved, or when plank roads are laid, the tracks of said railway may be laid elsewhere than in the center thereof, as may be most convenient, under the direction of the common council, as shall least obstruct the public travel thereon. When the grantees shall complete one track of the said railway, and place cars thereon, for public use, they may at any time thereafter, within five years, build a second track, so they do not interrupt the running of their cars on the first completed track: Provided, the consent of the common council is first obtained.

SEC. 4. The track of said railway shall be laid of such rails as shall least obstruct the free passage of vehicles and carriages over the same; and the upper surface of the rails shall be laid flush with the surface of the streets, and shall conform to the grades thereof as now established or as they shall from time to time be re-established or altered; and in case of grading, paving, or otherwise, if it be necessary to relay said rails, with necessary ties and string-
635 ers, the same shall be done at the expense of the grantees; and in all streets and parts of streets which are not paved,

the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city surveyor. The grantees, or their assigns, shall be required to keep the surface of the streets inside of the rails in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portions of the streets at the expense of the grantees, and in such manner as not to obstruct travel in any part of the street.

SEC. 5. The cars to be used on said railways shall be drawn by animals only, at a speed not exceeding the rate of six miles per hour, and shall be run as often as public convenience shall require, and the common council shall by resolution prescribe: Provided, always, that said council will not require them to run regular cars oftener than once in twenty minutes during fourteen hours every day, from the fifteenth day of April to the fifteenth day of October, and twelve hours every day from the fifteenth day of October to the fifteenth day of April, and the cars and carriages used by said grantees shall be of the best style in use on street railways in this city, and the cars in use upon such railway shall be run for no other purpose than to transport passengers and their ordinary baggage: Provided, that other cars and carriages may be used for cleaning said railway tracks from obstructions by snow or otherwise.

SEC. 6. The rate of fare for any distance shall not exceed five cents in any one car, or on any one route named in this ordinance, except where cars or carriages shall be chartered for specific purposes; provided, cars so chartered shall not be considered regular cars within the meaning of the preceding section.

SEC. 7. Cars drawn in the same direction shall not approach
636 each other within a distance of one hundred feet, except in cases of accident or at stations, or for the purpose of connecting two cars together.

SEC. 8. The said grantees shall complete their railway from Woodward avenue through Grand River street to the easterly line of the Woodbridge farm contemporaneously with the paving of said street to said easterly line of the Woodbridge farm; said road thence from the easterly line of the Woodbridge farm to be completed to the western limits of the city as soon as the public necessity require it, and the common council shall be the judges of such necessity, and shall also complete their road on any street designated by the common council from Grand River street to the Detroit river, or to Jefferson avenue, within three months after such designation shall be made by said council.

SEC. 9. No car shall be allowed to stop on a cross-walk, or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street.

SEC. 10. When the conductor of any car is required to stop at the intersection of streets to receive or leave passengers, the cars shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 11. The grantees or their assigns shall employ careful, sober and prudent agents, conductors and drivers to take charge of their cars while on the road, and it shall be the duty of all such agents,

conductors, and drivers to keep vigilant watch for all trains, carriages, or persons on foot and especially children, either upon the track or moving towards it; at the first appearance of danger to such teams, carriages, footmen or children or other obstructions, the cars shall be stopped in the shortest time and space possible.

SEC. 12. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

637 SEC. 13. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

SEC. 14. The cars shall at all times be entitled to the track, and any vehicles upon the track of said railway shall turn out when the car comes up, so as to leave the track, unobstructed, and the drivers of any vehicles refusing to do so, shall be liable to a fine not exceeding five dollars, on conviction before the recorder's court of said city of Detroit, and cost of prosecution shall not be at the expense of the city.

SEC. 15. The cars, after sunset, shall be provided with signal lights—blue in front, and green in rear of the cars.

SEC. 16. Wherever gas, or water pipes and sewers are now laid in the streets herein specified, and through which railways are to pass, the said railway must be laid down and maintained subject to the right now in the city, and the gas company and sewer and water commissioners to take up or remove said pipes or sewers in such a manner as not unnecessarily to damage or injure said railways or their use, without claim against said city, gas company, or water or sewer commissioners; and the common council expressly reserves to itself the right hereafter to lay down or to permit to be laid down and repaired in said streets, gas or water pipes and sewers, whenever the public or private convenience may require; the said gas or water companies or private individuals who shall take up pavement for the purposes aforesaid, being always required as by the present city ordinance to restore the pavement in the street to its former condition.

SEC. 17. If said grantees or their assigns shall fail to complete any of the aforesaid railways within the time prescribed by this ordinance, or by resolution of the common council, then the
638 rights and privileges granted shall be forfeited as to any and every route herein established, which is not commenced and completed in the time herein prescribed, and the city shall be entitled to take possession thereof: Provided, the council does not extend the time: Provided, that if said grantees shall be delayed by the order or injunction of any court: Provided, said injunction is not obtained by connivance of the said grantees: And provided, further, that if said grantees shall use due diligence to have said injunction removed, then the time of such delay shall be excluded from the time of completion prescribed in this ordinance.

SEC. 18. It is hereby reserved to the common council of the city of Detroit the right to make such further rules, orders or regulations as may from time to time be deemed necessary to protect the inter-

ests, safety, welfare or accommodation of the public in relation to said railways.

SEC. 19. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

SEC. 20. This ordinance shall be void and of no effect unless the grantees shall, within one month from the date of the passage thereof, notify the common council in writing of their acceptance of and agreement to the provisions of this ordinance, and shall, within six months after said last date, commence the work of building and constructing said railway from Woodward avenue to the east line of the Woodbridge farm.

SEC. 21. It is distinctly provided, understood and agreed that all the rights, franchises or privileges hereby conferred upon the grantees are subject to the rights now vested in the Detroit City Railway Company.

SEC. 22. If hereafter the said Grand River street shall be paved westerly of the easterly line of the Woodbridge farm, or any
639 other street occupied by said company, the said grantees shall contemporaneously with the paving of said street at their own expense, pave all the portion of the street or streets which lies within their track, or any switches or turnouts placed by them, such expense to include the cost of grading, excavating, removal of earth and all expenses necessary for paving the street to the extent above specified.

SEC. 23. The said grantees and their assigns shall pay to the treasurer of the city of Detroit annually after five years from the passage of this ordinance $15 on each and every passenger car, to be collected as a license for the use of the city after the term of five years from and after this date.

SEC. 24. Whenever the said grantees, their successors or assigns, shall have organized themselves into a body politic and corporate under the said act of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be given, granted and duly vested in said corporation without any further action, consent, permission or authority of the common council whatever.

SEC. 25. This ordinance shall take immediate effect.

Approved May 1, 1868.

WM. W. WHEATON, *Mayor.*

Attest:

HENRY STARKEY, *City Clerk.*

EXHIBIT "25."

From Proceedings of Common Council of 1868, page 102.

By Ald. Codd:

Communication from Harvey King, president of the Grand River Street Railway Company, accepting the provisions of the ordinance approved May 1, 1868.

Accepted and ordered placed on file.

640 EXHIBIT "26."

From Proceedings of Common Council of 1865, 1866, page 143.

Accepted and adopted.

From special committee:

To the honorable the common council:

The undersigned, to whom was referred the petition of Detroit City Railway Company, asking the council to rescind their resolution requiring the extension of the track of the company on the Woodward Avenue route to Farnsworth street, respectfully report: They have gone over the route in question; there are but five houses between the present terminus of the road and Farnsworth street; by the ordinance the company are not obligated to extend their track beyond the present terminus until "such time as the public necessity may require."—Ordinances, p. 201, sec. 6.

The necessity is left an open question of fact. It is not left to the judgment or opinion of the council. If at all, it must be determined by a court or jury, as other questions of fact. The representatives of the company claim that with so few dwellings on the line of the proposed extension, no public necessity demands it; that when public necessity does require it, it will pay, and the company will be glad to invest in the extension. On the other hand, the parties desiring the extension claim that it will pay, that the extension will draw travel and patronage from sections beyond, and on either side of the extension, which will make the investment remunerative, and that public necessity now requires it.

Your committee, after much time spent in interviews with the respective parties in interest, are unable to determine whether public necessity does yet require the extension; and as the course
641 pursued by your honorable body seems to be the only mode in which the question of necessity can be brought to an issue, they recommend that the resolution should not be rescinded.

The parties more immediately in interest represent that they have confidence that they can establish the fact that the public necessity does require the extension and that if your honorable body does not rescind the resolution, they will, at their own expense, test the question. Your committee deem it only fair to afford the parties interested an opportunity of doing so, as no expenses can be entailed upon the city without your future direction.

July 9, 1866.

Respectfully,

WM. B. HOWE, *Chairman.*
A. HENRY SCHMITDIEL.
JOHN CONSIDINE.
WM. GRAY.

Adopted, with the proviso that the parties give bonds to indemnify city for costs of any suit in the matter.

EXHIBIT "27."

From Proceedings of Common Council of 1870, page 153.

By Ald. Bagg:

Of the Grand River Street Railway Company, asking permission to extend their track from the north line of Fort street to the north line of Jefferson avenue.

Referred to the committee on street railways.

642 EXHIBIT "28."

From Proceedings of Common Council of 1870, page 166.

Accepted and adopted.

Street Railways.

To the honorable the common council.

GENTLEMEN: Your committee on street railways, to whom was referred the petition of Wm. B. Wesson, president of the Grand River Street Railway Company, desiring permission from this honorable body for the extension of the present terminus of their track, from the north line of Fort street down Woodward avenue to the northerly line of Jefferson avenue, would beg leave to state that, after a careful examination of the charter from the legislature of Michigan, approved February 15th, 1855 (Laws of Michigan, 1855, page 388), we find it therein stated, in the latter part of section 2: Provided, that there shall not be, at any time, more than two parallel street railway tracks on Woodward avenue.

In compliance with the charter, your committee is therefore necessitated to report adverse to the prayer of the petitioner.

All of which is respectfully submitted.

PETER HILL.
THOMAS HENDERSON.
TIMOTHY MAHONY.

Accepted and laid on the table for one week.

643 EXHIBIT "29."

From Proceedings of Common Council of 1870, page 188.

Special.

To the honorable the common council of the city of Detroit:

The undersigned committee, to whom was referred the subject-matter of the communication of William B. Wesson, president of the Grand River Street railway, respectfully report:

That by an ordinance establishing the Detroit City Railway Company (so called), that company was authorized to construct and operate railways on Gratiot street, Grand River street, Michigan

avenue and Woodward avenue; and such railways on Grand River and Gratiot streets and Michigan avenue should each run into and connect on the same track, with the Woodward Avenue track, so as to form each of them one continuous route to Jefferson avenue, and any passenger travelling on either of these routes was entitled for the same fare to be carried to Brush or Third street.

It was further provided that on the failure of the city railway company to construct any of said railway routes the city might take possession of such route. The right was given to the company to lay two tracks, and two tracks were laid from Woodward avenue to Fort street. On the failure to perform the grant to the city railway to construct the Grand River route the council made a grant thereof to the Grand River Street Railway Company. That company extended its track from Grand River street, on Woodward avenue to Fort street, and near the point where the city railway has two tracks.

On the notice of Mr. Wesson of the intention of the Grand River Street railway to extend its tracks to Jefferson avenue the
644 council, on the report of the committee to whom the notice was referred, indicated that as there were two tracks on Woodward avenue none other could be laid; for the reason that by the second section of the Grand River Street railway, it was provided that there should not be more than two parallel street railway tracks on Woodward avenue.

Your committee suggest, without expressing any opinion whether the city was and is not entitled to use either of these two parallel tracks on Woodward avenue by reason of the right to take possession of the Grand River Street route, if the company failed to construct the track thereon, your committee infers that the taking possession of the route includes the right to use the track from Grand River street to Jefferson avenue, as it was declared to be a part of the route and the Woodward Avenue track was to be used as such and a part thereof.

As the matter now stands persons travelling on the Grand River Street railway cannot enjoy the rights to which they would be entitled if the city railway company had constructed all its routes; that is, they cannot take and leave cars at Jefferson avenue and cannot on the same fare be carried either to Brush or Third street.

The Grand River Street railway has procured, and has on hand and ready, the necessary iron to extend its track to Jefferson avenue.

Your committee are of opinion that the Grand River Street railway should be permitted to extend its track to Jefferson avenue for the accommodation of the public using that road, and therefore your committee recommends that an ordinance be passed amending section two of the charter of the Grand River Street Railway Company by rescinding the proviso therein.

Your committee has no doubt of the right of the Grand River Street railway to extend its track to Jefferson avenue; and it
645 was so held in the opinion of the Hon. Charles I. Walker, then circuit judge, in the case of the Detroit City Railway

Co. against the Grand River Street railway. Your committee therefore recommend the adoption of the following resolution:

Resolved, That the city attorney be, and he is hereby, directed to transmit to the council an ordinance to amend section two of an ordinance relative to granting the Grand River Street railway permission to operate a street railway through certain portions of the city.

JAMES J. BROWN,
City Attorney.
PETER HILL.
THOMAS HENDERSON.
TIMOTHY MAHONY.

Ald. Ruehle moved to refer back to the committee.

EXHIBIT "30."

From Proceedings of Common Council of 1870, page 209.

By Ald. Henderson:

Of Campbell, Linn & Co. and sixty-three other property-owners and business men on Woodward avenue, between Fort street and Jefferson avenue, asking that the Grand River Street Railway Company may have permission to extend their track to Jefferson avenue.

Referred to the committee on street railways.

EXHIBIT "31."

From Journal of Proceedings of Common Council of 1870, pages 244, 245.

Street Railways.

To the honorable the common council.

GENTLEMEN: The undersigned special committee, to whom
646 was referred the petition of the Grand River Street Railway Company, for the privilege of laying their track to Jefferson avenue, on Woodward avenue, and to whom also was referred the petition of citizens to the same effect, respectfully report adversely to the prayer of the petitioners for the reason that in the opinion of the committee the public interests forbid the laying of another track on Woodward avenue.

Your committee has, however, heard and fully considered the views of said railway company, as presented by their able and efficient counselor, Mr. Holbrook, who has presented for our consideration the annexed resolution which he thinks will protect rights and interests of his client if passed by your honorable body.

We are of the opinion that the first of these resolutions should be passed, which will confer upon the company all the right the council can exercise in the matter, and will leave the company to enforce

them in the courts. We, therefore, recommend the passage of the first of the following resolutions.

Your committee respectfully ask to be discharged from all further action in the matter.

All of which is respectfully submitted.

PETER HILL,
Chairman of Committee.

J. P. WHITMORE,
City Counselor.

Resolved, That the Grand River Street Railway Company, and the Detroit City Railway Company, be and they are hereby authorized and requested to run the cars on their tracks from the outer terminus on Grand River street to Jefferson avenue, so as to form one continuous route on the tracks already laid and established from such outer terminus on the Grand River Street railway to Jefferson avenue, subjecting the passengers thereon to the pay-
647 ment of only one fare upon such route. And the respective companies are hereby ordered and required to allow and make such running arrangements and connections of their tracks as shall be most expedient for the purposes aforesaid.

Resolved, That the street commissioner of the western district make such connection.

Accepted.

Ald. Balch moved to amend the resolution by striking out the words "and required," where they first occur, and also in the last clause by striking out the words "ordered and required" and inserting "authorized."

Lost.

The report was then adopted.

EXHIBIT "32."

From Journal of Proceedings of Common Council of 1871, page 162.

Fifth ward.

By Ald. Folsom:

Whereas, the public good requires the Grand River Avenue street cars to be run to Jefferson avenue, to avoid the great public inconvenience of walking from Jefferson avenue to the north line of Fort street, and then pay the same fare as would have to be paid if the cars had run to Jefferson avenue; therefore,

Resolved, That the city attorney bring in the proper ordinance, allowing the Grand River Street Railway Company the privilege of extending their car track from its present terminus, at Fort street, to Jefferson avenue, under the direction of the committee on streets and city surveyor.

Adopted.

648 EXHIBIT "33."

From Journal of Proceedings of Common Council of 1871, page 196.

From the city attorney.

To the honorable the common council.

GENTLEMEN: In accordance with your instructions, I herewith transmit an ordinance to amend the Grand River Avenue railway ordinance, so as to allow that company the right to extend their track on Woodward avenue to Jefferson avenue.

Very respectfully, JAMES J. BROWN,
City Attorney.

Accepted, and the ordinance read the first and second time by its title, the rules were suspended, the ordinance read the third time by sections, laid on the table and ordered printed.

EXHIBIT "34."

From Proceedings of Common Council of 1871, page 260.

An ordinance to amend section 2, title 4, of chapter 50, of the Revised Ordinances of 1871.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. That section 2, chapter 50, title 4, of the Revised Ordinances of 1871, be and the same is hereby amended so as to read as follows, to wit:

"The said grantee are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, through
649 said first-named avenue to its intersection with Grand River avenue, and from thence on and through said Grand River avenue to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe and Toledo railway tracks, and also on and through any other street or streets running between the western terminus above specified and Woodward avenue from said Grand River avenue to the Detroit river, as the common council shall by resolution designate: Provided, that the track from Fort street to Jefferson avenue shall be laid under the direction of the committee on streets and the city surveyor."

SEC. 2. This ordinance shall take immediate effect.

Approved June 26, 1871.

WM. W. WHEATON, *Mayor.*

Attest:

HENRY STARKEY, *City Clerk.*

EXHIBIT "35."

From Journal of Proceedings of Common Council of 1873, pages 86, 87.

An ordinance authorizing the "Detroit Western Transit railway" to construct and operate its railroad.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. Consent, permission and authority are hereby given and granted to the "Detroit Western Transit railway," a corporation organized under the provisions of chapter seventy-six (76) of the Compiled Laws of 1871, of the State of Michigan, in regard to train railways, to construct and operate its railway from the westerly terminus of Woodbridge street on the westerly line of the city
650 of Detroit, and along said street northerly and easterly to the westerly line of the Michigan Central railroad. A diagram of the route of said railway, within two months from the passage hereof, shall be filed with the city clerk and surveyor.

SEC. 2. Said company is authorized to lay a single track, with necessary and convenient turnouts, side tracks, branch tracks and switches to communicate with the Michigan Central railroad, and on first obtaining the consent of the common council with such manufacturing and business as may desire a connection on the line of said road.

Such track shall be laid with the inside of each rail two feet four and one-fourth inches from the center of the street. "That the shape and style of the rail to be used shall be a flat bar rail with an upper and lower surface—the lower surface shall be at least three inches in width, the upper surface shall be one and three-fourth inches higher than the lower surface, and no higher, and shall be laid flush with the pavement of the street." Said rails shall be laid four feet eight (8) and a half inches apart, with the upper surface of the rail flush with the surface of the street, and in such a manner as not to interfere with ordinary travel, and particularly of wheeled vehicles, and shall conform to the grade of the streets as existing or hereafter altered.

SEC. 3. If it shall become necessary to relay said rails the same shall be done at the expense of the grantee, and in all streets or parts of streets which are not paved the rails shall be laid in such a manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city surveyor. The grantee and its assigns shall keep the surface of the streets from curb to curb in good order and repair, and all snow, ice, dirt and
651 filth cleaned and removed from the streets at the expense of the grantee, in such manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims or damages for which it might be made or become liable to pay by reason of the construc-

tion, making or operating of said railway, or the giving and allowing of the license, right and privileges hereby granted.

SEC. 4. Said railway shall be laid down subject to the right of the city, or of any gas company, or of the water or sewer commissioner to lay down, take up, change or remove any works of any kind on or beneath the surface of the streets without any claim for damages on the part of said railway.

SEC. 5. The cars to be used on said railway shall be run and drawn by animals only, between the hours of six (6) a. m. and six (6) p. m., but between the hours of six (6) p. m. and six (6) a. m. steam power may be employed to draw said cars, and said cars may be run at irregular hours, the main design of said company being to transport freight and to accommodate the heavy traffic along the river front. Mixed freight and passenger trains for the accommodation of workmen may be run at such fixed hours as the company shall determine upon.

SEC. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing so to do shall be liable to a fine, as provided in section 16 of this ordinance. The rate of speed of any car or engine on said railway shall not exceed six miles per hour.

SEC. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations, or for the purpose of connecting cars together.

All cars drawn by horses after sunset shall be provided with
652 signal lights, red in front and green in rear; and all cars drawn by engines shall have rear and front lights as usual on railroads.

SEC. 8. No car, or the engine or horses thereto attached, shall be allowed to stop on a cross-walk or in front of any intersecting street, except to avoid collisions and to prevent danger to persons or property in the street, and conductors shall not allow any person to enter or leave the cars while in motion. Nor shall any engine or car be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it.

SEC. 9. The grantee and its assigns shall employ careful, sober and prudent agents, engineers, conductors and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents, engineers, conductors and drivers to keep vigilant watch for all carriages and persons on foot, especially children, either upon the track or moving toward it. At the firt appearance of danger to such teams, carriages, footmen, children or other obstructions, the cars shall be stopped in the shortest time and space possible, and notice-bells shall be attached to all horses drawing such cars in the daytime.

SEC. 10. If, hereafter the pavement on said streets or any streets occupied by said company, shall be extended, or any such street shall be ordered repaved, the said grantee shall, contemporaneously with the paving or repaving of said streets, at its own expense, excavate, grade and pave or repave, with the same material, or with

material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their tracks, or any switches or turnouts placed by them, and two feet four inches on either side thereof, such expenses to include the cost of paving, repaving, grading, excavating, removing of earth, and all expenses necessary for paving or repaving the street to the extent
653 above specified, and at all times keep or cause to be kept in good order or repair such pavement within said track and distance on either side thereof.

SEC. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings that teams, vehicles and persons on foot will be enabled to cross the track conveniently at all times.

SEC. 12. Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance. The tariff for freight shall not exceed the rates fixed by the train railway act. When cars of other railroads pass over the track of said railway the company may charge such rates as are provided in said last-mentioned act, and none other.

SEC. 13. It is hereby reserved to the common council of the city of Detroit the right to make amendments to this grant and ordinance, and such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of the approval thereof, notify the common council in writing of its acceptance of and its agreement to the provisions of this ordinance and shall, within two months thereafter, commence the work of constructing and building said railway, and complete the same to the western limits of the city as soon as the public necessity requires it, and the common council shall be the judge of such necessity.

SEC. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after its passage.

654 SEC. 16. Any wilful violation of, or failure to comply with the provisions of this ordinance by said Detroit Western Transit railway, or by any agent, conductor, driver or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out, as required by section 6, the same shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the county jail or the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months.

Approved March 28, 1873.

HUGH MOFFAT, *Mayor.*

Attest:

CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "36."

From Proceedings of Common Council of 1873, pages 118, 119.

An ordinance authorizing the "Grand Trunk Junction street railway" to construct and operate its railroad.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. Consent, permission and authority are hereby given and granted to the "Grand Trunk Junction street railway" a corporation organized under the laws of the State of Michigan in regard to tram railways, to construct and operate its railway from Mt. Elliott avenue through Congress, Seventh, Baker and Twenty-fourth streets and the Dix road to the westerly limits of the
655 city. A diagram of the route of said railway within two months from the passage hereof shall be filed with the city clerk and surveyor. Provided, that should any part of the territory west of the city limits and through which the track of said road shall be laid be added to the corporation, then the rights hereby granted shall include and cover so much of the said track as shall be in such territory, and be subject to all the provisos and conditions of this ordinance.

SEC. 2. Said company is authorized to lay, use, and maintain a single track, with necessary and convenient turnouts, side tracks, and switches in and along the course of the streets mentioned in the preceding section, and to operate thereon street railway cars during the term hereinafter prescribed, subject to all the conditions and restrictions of this ordinance.

Such tracks shall be laid with the inside of each rail two feet four and one-fourth inches from the center of the street. Said rails shall be of the same style and shape as those now in use by the city street railways, and shall be laid four feet eight and a half inches apart, with the upper surface of the rail flush with the surface of the street, and in such a manner as not to interfere with ordinary travel, and particularly of wheeled vehicles, and shall conform to the grade of the streets as existing or hereafter altered.

SEC. 3. If it shall become necessary to relay said rails, the same shall be done at the expense of the grantee, and in all streets or parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the city surveyor. The grantee and its assigns shall keep the surface of the streets, from curb to curb, in good order and repair, and all snow, ice, dirt,
656 and filth cleaned and removed from such portion of the streets at the expense of the grantee, in such manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims or damages for which it might be made or become liable to pay by reason of the construction, making or operating of said railway, or

the giving and allowing of the license, right, and privileges hereby granted.

SEC. 4. Said railway shall be laid down subject to the right of the city or of any gas company, or of the water or sewer commissioners to lay down, take up, change or remove any works of any kind on or beneath the surface of the streets without any claim for damages on the part of said railway.

SEC. 5. The cars to be on said railway shall be run and drawn by animals only, at a speed not exceeding six miles an hour, and as often as the common council shall by resolution prescribe. Provided, the cars and carriages used by said grantee shall be of the best style in use on street railways in the city of Detroit, and they shall not be used for any other purpose than to transport passengers and their ordinary baggage. Provided, that other cars may be used for cleaning said railway track from obstructions by snow and otherwise.

SEC. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn out when any cars comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing so to do shall be liable to a fine as provided in section 16 of this ordinance.

SEC. 7. Cars drawn in the same direction shall not approach each other within a distance of 100 feet, except in cases of accident, or at stations, or for the purpose of connecting cars together. All
657 cars used upon said railroad after sunset shall be provided with signal lights, red in front and green in rear.

SEC. 8. No car, or the horses thereto attached, shall be allowed to stop on a cross-walk or in front of any intersecting street, except to avoid collisions and to prevent danger to persons or property in the street; and conductors shall not allow any person to enter or leave the cars while in motion. Nor shall any car be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it. When any car is required to be stopped at the intersection of any street to receive or leave passengers it shall be so stopped as to leave the rear platform slightly over the crossing.

SEC. 9. The grantee and its assigns shall employ careful, sober and prudent agents, conductors, and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages and persons on foot, especially children, either upon the track or moving toward it. At the first appearance of danger to such teams, carriages, footmen, children or other obstructions the car shall be stopped in the shortest time and space possible, and notice bells shall be attached to all horses drawing such cars. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them.

SEC. 10. If, hereafter the pavement on said streets or on any streets occupied by said company shall be extended, or any such street shall be ordered repaved, the said grantee shall contemporaneously with the paving or repaving of said streets, at its own expense, excavate, grade and pave or repave, with the same material

or with material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their track or any switches, or turnouts placed by them, and two
658 feet nine inches on either side thereof, such expenses to include the cost of paving, repaving, grading, excavating, removing of earth, and all expenses necessary for paving or repaving the street to the extent above specified, and at all times keep or cause to be kept in good order or repair such pavement within said track and distance on either side thereof.

SEC. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings on all streets not paved, that teams, vehicles and persons on foot will be enabled to cross the track conveniently at all times.

SEC. 12. Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance. The said grantee shall have the use of the streets as specified in this ordinance, free, for the term of two years after the completion of said road to the limits of the city; and on the third year and after they shall pay the city the following sums: The third year one per cent., fourth year two per cent., fifth year three per cent., sixth year four per cent., seventh year five per cent. of their net earnings, and so continue to pay the city five per cent. per annum, as described, until the term of their contract with the city expires. All payments to be made semi-annually.

SEC. 13. It is hereby reserved to the common council of the city of Detroit the right to make amendments to this grant and ordinance, and such further rules, orders, or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of the approval thereof, notify the common council, in writing, of its accept-
659 ance of and its agreement to the provisions of this ordinance, and shall within two months thereafter commence the work of constructing and building said railway, and complete the same to the limits of the city in two years.

SEC. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to 25 years, from and after its passage.

SEC. 16. Any willful violation or failure to comply with the provisions of this ordinance by said Grand Trunk Junction street railway or by any agent, conductor, driver, or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out as required by section 6, the same shall be punished by a fine not to exceed $100 and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the county jail or to the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months.

Passed, notwithstanding the veto of the mayor, by the following vote:

Yeas—Ald. Bostford, Broeg, Christian, Daly, Dulieu, Flower, Grelling, Hinchman, Hough, Preston, Shanahan, Stange, Welch, Woolley, and the president—15.

Nays—Ald. Garrison, O'Keefe, Parsons and Ruehle—4.

CHAS. H. BORGMAN, *City Clerk.*

Detroit, April 15, 1873.

660 EXHIBIT "37."

From Proceedings of Common Council of 1873, pages 304, 305.

An ordinance authorizing the "Detroit and Grand Trunk Junction street railway" to construct and operate its railroad.

It is hereby ordained by the common council of Detroit:

SECTION 1. Consent, permission and authority are hereby given and granted to the "Detroit and Grand Trunk Junction street railway," a corporation organized under the laws of the State of Michigan in regard to street railway companies, to construct and operate its railway from Mt. Elliott avenue through Congress, Larned, Randolph streets and Joseph Campau avenue, Seventh, Baker, and Twenty-fourth streets and the Dix road to the westerly limits of the city. A diagram of the route of said railway, within two months from the passage hereof shall be filed with the city clerk and surveyor. Provided, that should any part of the territory west of the city limits and through which the track of said road shall be laid be added to the corporation, then the rights hereby granted shall include and cover so much of the said track as shall be in such territory, and be subject to all the provisions and conditions of this ordinance.

SEC. 2. Said company is authorized to lay, use and maintain a single track, with necessary and convenient turnouts, side tracks and switches in and along the course of the streets mentioned in the preceding section, except on Congress and Larned streets above Randolph, which shall be a single track only, and operate thereon street railway cars during the term hereinafter prescribed,
661 subject to all the conditions and restrictions of this ordinance.

Such track shall be laid with the inside of each rail two feet four and one-fourth inches from the center of the street. Said rails shall be of the same style and shape as those now in use by the city street railways, and shall be laid four feet eight and one-eighth inches apart, with the upper surface of the rail flush with the surface of the street, and in such a manner as not to interfere with ordinary travel, and particularly of wheeled vehicles, and shall conform to the grade of the streets as existing or hereafter altered.

SEC. 3. If it shall become necessary to relay said rails, the same shall be done at the expense of the grantee and in all streets or parts of streets which are not paved, the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as

shall be authorized and approved by the common council. The grantee and its assigns shall keep the surface of the streets, from curb to curb, in good order and repair, and all snow, ice, dirt and filth cleaned and removed from such portion of the streets at the expense of the grantee, in such a manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims and damages for which it might be made or become liable to pay by reason of the construction, making or operating of said railway, or the giving and allowing of the license, right and privileges hereby granted.

SEC. 4. Said railway shall be laid down subject to the right of the city, or of any gas company, or the water or sewer commissioners, to lay down, take up, change or remove any works of any kind on or beneath the surface of the streets without any claim for damages on the part of said railway.

662 SEC. 5. The cars to be used on said railway shall be run and drawn by animals only, at a speed not exceeding six miles an hour, and as often as the common council shall by resolution prescribe. The cars and carriages used by said grantee shall be of the best style in use on street railways in the city of Detroit, and they shall not be used for any other purpose than to transport passengers and their ordinary baggage. Provided, that other cars may be used for cleaning said railway track from obstructions by snow or otherwise.

SEC. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicles refusing so to do shall be liable to a fine as provided in section 16 of this ordinance.

SEC. 7. Cars drawn in the same direction shall not approach each other within a distance of one hundred feet, except in cases of accident, or at stations or for the purpose of connecting cars together. All cars used upon said railroad after sunset shall be provided with signal lights, red in front and green in rear.

SEC. 8. No car, or the horse thereto attached, shall be allowed to stop on a cross-walk or in front of any intersecting street, except to avoid collisions and to prevent danger to persons or property in the street, and conductors shall not allow any person to enter or leave the cars while in motion. Nor shall any car be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it. When any car is required to be stopped at the intersection of any street to receive or leave passengers, it shall be so stopped as to leave the rear platform slightly over the crossing.

663 SEC. 9. The grantee and its assigns shall employ careful, sober and prudent agents, conductors and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents, conductors and drivers to keep vigilant watch for all trains, carriages and persons on foot, especially children, either upon the track or moving toward it. At the first appearance of danger to such teams, carriages, footmen, children or other obstructions, the cars shall be stopped in the shortest time and space pos-

sible and notice bells shall be attached to all horses drawing such cars. Conductors shall announce to the passengers the names of the principal squares and streets as the cars reach them; and all cars shall be required to come to a full stop before coming to the Michigan Central Railroad crossing.

SEC. 10. If hereafter the pavement on said streets or any street occupied by said company, shall be extended or any such street shall be ordered repaved, the said grantee shall contemporaneously with the paving or repaving of said streets, at its own expense, excavate, grade, and pave or repave with the same material, or with material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their tracks or any switches or turnouts placed by them, and two feet nine inches on either side thereof, such expenses to include the cost of paving, repaving, grading, excavating, removing of earth and all expenses necessary for paving or repaving the street to the extent above specified, and at all times keep or cause to be keep in good order or repair such pavement within said track and distance on either side thereof.

SEC. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings on all streets not paved, that teams, vehicles and persons on foot will be enabled to cross the track conveniently at all times.

664 SEC. 12. Passengers conveyed upon said railway in said city shall be charged no more than five cents for any distance. "The said grantee and its assigns shall pay to the treasurer of the city of Detroit annually $25 on each and every two-horse car, and $12.50 on each and every one-horse car owned by said grantee or assign, excepting only those cars used expressly for constructing, repairing and cleaning the track of said road, to be collected as a license fee for the use of the city, after said tracks shall be laid the length of one mile. And the secretary of said grantee shall, on the first Monday of July of each and every year during the life of this ordinance, make and deliver to the treasurer of the city of Detroit a statement of the gross earnings of said Detroit & Grand Trunk Junction street railway, the same to be signed and sworn to by said secretary and the said grantees and their assignees shall pay to the treasurer of the city of Detroit annually a special tax on gross earnings of said street railway as follows: The first five years from the acceptance of this ordinance to be free; the second five years one per cent. and for the balance of the life of the ordinance three per cent."

SEC. 13. It is hereby reserved to the common council of the city of Detroit the right to make amendments to this grant and ordinance, and such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of approval thereof,

notify the common council in writing of its acceptance of and its agreement to the provisions of this ordinance and shall, within two months thereafter, commence the work of constructing and building said railway, and complete the same as soon as the public
665 necessity requires it, and the common council shall be the judge of such necessity.

SEC. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after its passage.

SEC. 16. Any wilful violation of, or failure to comply with, the provisions of this ordinance by said Detroit & Grand Trunk Junction street railway, or by any agent, conductor, driver, or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out as required by section 6, the same shall be punished by a fine not to exceed one hundred dollars and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the county jail or to the Detroit House of Correction until the payment thereof, for any period of time not exceeding six months.

SEC. 17. An ordinance authorizing the "Grand Trunk Junction street railway" to construct and operate its railroad is hereby repealed.

Passed, notwithstanding the veto of the mayor, by the following vote:

Yeas—Ald. Bostford, Broeg, Christian, Daly, Dullea, Garrison, Grelling, Hinchman, Hough, Lichtenberg, O'Keefe, Stange, Welch, Woolley, and the president—15.

Nays—Ald. Flower, Parsons, Ruehle and Shanahan—4.

CHARLES H. BORGMAN,
City Clerk.

Detroit, June 13, 1873.

666 EXHIBIT "38."

From Proceedings of Common Council of 1873, pages 368, 369.

An ordinance authorizing the "St. Aubin Avenue street railway" to construct and operate its railway.

It is hereby ordained by the common council of the city of Detroit:

SECTION 1. An ordinance authorizing the "St. Aubin Avenue Street Railway Co.," a corporation organized under the laws of the State of Michigan in regard to tram railway companies, to construct and operate its railway from Gratiot street to the northerly limits of the city, on St. Aubin avenue. A diagram of the route of said railway, within two months of the passage hereof, shall be filed with the city clerk and surveyor. Provided, that should any part of the territory north of the city limits and through which the track of said road shall be laid, be added to the corporation, then the rights hereby granted shall include and cover so much of the said track as

shall be in such territory, and be subject to all the provisos and conditions of this ordinance.

SEC. 2. Said company is authorized to lay, use and maintain a single track, with necessary and convenient turnouts, side tracks and switches in and along the course of said avenue mentioned in the preceding section, and to operate thereon street railway cars during the term hereinafter prescribed, subject to all the conditions and restrictions of this ordinance.

Such track shall be laid with the inside of each rail two feet four and one-fourth inches from the center of the street. Said rails shall be of the same style and shape as those now in use by the
667 city street railways, and shall be laid four feet eight and one-half inches apart, with the upper surface of the rail flush with the surface of the street and in such a manner as not to interfere with ordinary travel, and particularly of wheeled vehicles, and shall conform to the grade of the streets as existing or hereafter altered.

SEC. 3. If it shall become necessary to relay said rails, the same shall be done at the expense of the grantee, and in all streets or parts of streets which are not paved the rails shall be laid in such manner as shall least interfere with the public travel thereon, and as shall be authorized and approved by the common council. The grantee and its assigns shall keep the surface of the streets, from curb to curb in good order and repair, and all snow, ice, dirt, and filth cleaned and removed from such portion of the streets at the expense of the grantee, in such manner as not to obstruct travel in any part of the street. And said company shall fully indemnify and save harmless the city from any and all claims and damages for which it might be made or become liable to pay by reason of the construction, making or operating of said railway, or the giving and allowing of the license, right and privilege hereby granted.

SEC. 4. Said railway shall be laid down subject to the right of the city, or of any gas company, or the water or sewer commissioners, to lay down, take up, change or remove any works of any kind on or beneath the surface of the streets without any claim for damages on the part of said railway.

SEC. 5. The cars to be used on said railway shall be run and drawn by animals only, at a speed not exceeding six miles an hour, and as often as the common council shall, by resolution, prescribe. Provided, the cars and carriages used by said grantee shall be of the best style in use on street railways in the city of Detroit, and
668 they shall not be used for any other purpose than to transport passengers and their ordinary baggage. Provided, that other cars may be used far cleaning said railway track from obstructions, by snow or otherwise.

SEC. 6. The trains on said railway shall at all times be entitled to the track, and vehicles on the track shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing so to do shall be liable to a fine as provided in section 16 of this ordinance.

SEC. 7. Cars drawn in the same direction shall not approach each

other within a distance of 100 feet, except in cases of accident, or at stations, or for the purpose of connecting cars together. All cars used upon said railroad after sunset shall be provided with signal lights, red in front and green in rear.

SEC. 8. No car or the horses thereto attached shall be allowed to stop on a cross-walk or in front of any intersecting street, except to avoid collisions and prevent danger to persons or property in the street; and drivers shall not allow any person to enter or leave the cars while in motion. Nor shall any cars be allowed to remain or stop at the intersection of any street so as to obstruct the free and ordinary use of it. When any car is required to be stopped at the intersection of any street to receive or leave passengers it shall be so stopped as to leave the rear platform slightly over the crossing.

SEC. 9. The grantee and its assigns shall employ careful, sober and prudent agents and drivers to take charge of the cars while on the road, and it shall be the duty of all such agents and drivers to keep vigilant watch for all trains, carriages. and persons on foot, especially children, either upon the track or moving toward it. At the first appearance of danger to such teams, carriages, footmen, children or other obstructions, the cars shall be stopped in
669 the shortest time and space possible, and notice bells shall be attached to all horses drawing such cars. Drivers shall announce to the passengers the names of the principal squares and streets as the cars reach them.

SEC. 10. The grantee is authorized to lay through the center of said avenue a substantial plank road or walk, of not less than six feet in width, well supported on stringers of sufficient strength, with a proper foundation, on which may be laid its track. Such road or walk shall also be so laid that teams may travel safely thereon and have convenient approach thereto. If hereafter the pavement on said streets or any street occupied by said company, shall be extended, or any such street shall be repaved, the said grantee shall contemporaneously with the paving or repaving of said streets, at its own expense, excavate, grade and pave or repave, with the same material, or with material and in a manner satisfactory to the common council, all the portion of the street or streets which lies within their track of any switches or turnouts, placed by them, and two feet nine inches on either side thereof, such expense to include the cost of paving, repaving, grading, excavating, removing of earth, and all expenses necessary for paving or repaving the street to the extent above specified, and at all times keep or cause to be kept in good order or repair such pavement within said track and distance on either side thereof.

SEC. 11. Said railway shall provide and keep in repair at all times such substantial and permanent approaches to its track at all street crossings on all streets not paved, that teams, vehicles and persons on foot will be enabled to cross the track conveniently at all times.

SEC. 12. Passengers conveyed upon said railway in said city, shall be charged no more than five cents for any distance. The said

grantee and its assigns shall pay to the treasurer of the city
670 of Detroit annually $25 on each and every two-horse car; and $12.50 on each and every one-horse car owned by said grantee or assign, excepting only those cars used expressly for constructing, repairing and cleaning the track of said road, to be collected as a license fee for the use of the city, after said track shall be laid the length of one mile.

And the secretary of said grantees shall, on the first Monday of July of each and every year during the life of this ordinance, make and deliver to the treasurer of the city of Detroit a statement of the gross earnings of said St. Aubin Avenue railway, the same to be signed and sworn to by said secretary, and the said grantee and their assigns shall pay to the treasurer of the city of Detroit annually, a special tax on the gross earnings of said street railway, as follows: The first five years from the acceptance of this ordinance to be free; the second five years one per cent, and for the balance of the life of this ordinance three per cent.

SEC. 13. It is hereby reserved to the common council of the city of Detroit the right to make amendments to this grant and ordinance, and such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interest, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 14. This ordinance shall be void and of no effect unless the grantee shall, within one month from the date of approval thereof, notify the common council in writing of its acceptance of and its agreement to the provisions of this ordinance, and shall, within two months thereafter, commence the work of constructing and building said railway, and complete the same as soon as the public necessity requires it, and the common council shall be the judge of such necessity.

671 SEC. 15. The powers and privileges conferred by the provisions of this ordinance shall be limited to 30 years from and after its passage.

SEC. 16. Any wilful violation of, or failure to, comply with the provisions of this ordinance by said St. Aubin Avenue railway, or by any agent, conductor, driver or any person in the employ of said grantee, or if the driver of any vehicle shall refuse to turn out as required by section 6, the same shall be punished by a fine not to exceed $100 and costs, and in the imposition of any such fine and costs the court may make a further sentence that the offender, except the grantee, be committed to the county jail or the Detroit House of Correction, until the payment thereof, for any period of time not exceeding six months.

SEC. 17. The grantee shall, if it so elects, have the right to extend its track on said avenue to Detroit river, subject to the consent of and on such conditions as the common council shall adopt.

Approved July 11, 1873.

HUGH MOFFAT, *Mayor.*

Attest:

CHAS. H. BORGMAN, *City Clerk.*

EXHIBIT "39."

From Journal of Proceedings of Common Council of 1886, pages 374, 375.

An ordinance to authorize the Highland Park Railway Company, its successors and assigns, a body corporate, organized under the laws of the State of Michigan, to construct, maintain and operate a railway on Woodward avenue, between the railroad crossing and the northern city limits.

672 It is hereby ordained by the people of the city of Detroit:

SECTION 1. That consent, permission and authority are hereby given, granted and duly vested in the Highland Park Railway Company, its successors and assigns, a corporation, organized under the laws of the State of Michigan, to construct, maintain and operate a single or double track street railway, with all the necessary and convenient tracks for turnouts, side tracks and switches, in and along Woodward avenue, commencing at the northerly side of the railroad crossing and running thence northerly to the city limits, and to keep, maintain, use and operate thereon street railway cars and carriages during all the time hereinafter specified and prescribed, and in the manner and upon the conditions set forth in this ordinance. Provided, that until the double track is laid, the switches shall be laid on such side as will be occupied by said double track when the same shall be constructed.

SEC. 2. The track of said railway shall be constructed under the supervision of the board of public works; and of rails similar to the rails now used by the city railway company on Woodward avenue, and such as shall the least obstruct the free passage of vehicles or carriages over, across or along the same, and the upper surface of the rails shall be laid flush with the surface of the street, and shall conform to the grade thereof as now established, or as it shall from time to time be re-established or altered by the city authorities.

SEC. 3. The railway through said street shall be laid so that the center of the track shall be the center of the street if on a single track, and if on a double track the inside rail of each track shall be laid within two feet and four inches of the center of the street, so as to enable two cars to pass on opposite tracks and leave a space between said cars of at least eighteen inches, and the gauge of said

673 track shall be at least four feet eight and one-half inches, and so as to accommodate the most common width of carriage wheels. Provided that where a single track is laid in the first instance, it may be laid so as to form one of a double track authorized under this section.

SEC. 4. The cars to be used on said railway shall be drawn by animals or operated by electric motors, and shall run at a rate of speed not to exceed ten miles an hour, and shall run as often as public convenience shall require and the common council shall prescribe. Provided, that said company shall run regular cars at least once in thirty minutes during sixteen hours in every day; and the

cars in use upon said railway shall be run for no other purpose than to transport passengers and their ordinary baggage. Provided, that if the operation of said railway by electricity shall be or become impracticable or dangerous to human life, the common council may revoke the privilege of thus operating said railway and compel said company to use animal power instead.

SEC. 5. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. The payment of such fare shall entitle the passenger to a continuous ride from any point upon said railway within the city limits, upon the cars of the Woodward Avenue Street Railway Company to any point upon the line of said last-named railway; and payment of fare by a passenger riding north upon Woodward Avenue street railway shall entitle such passenger to a continuous ride from any point upon that line upon the cars of the grantees' railway to any point upon its line within the city limits.

SEC. 6. No car shall be allowed to stop upon a cross-walk or in front of any intersecting streets except to avoid collision or prevent danger to persons or property in the street. When the conductor of any car is required to stop at the intersection of streets to
674 receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 7. The grantees or their assigns shall employ careful, sober and prudent persons to operate said railway and it shall be the duty of such employés to be vigilant and watchful to protect the public from danger.

SEC. 8. Conductors shall not allow ladies or children to enter or leave the car while in motion.

SEC. 9. Conductors shall announce to the passengers the names of cross-streets as the cars reach them.

SEC. 10. The cars shall at all times be entitled to the track and any vehicle upon the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed, and the driver of any vehicle refusing to do so shall be liable to a fine not exceeding fifty dollars on conviction before the recorder's court of the city of Detroit.

SEC. 11. Said grantees shall provide and keep in repair such substantial and permanent approaches to its track at all points on the line of its road, so that teams, vehicles, and persons shall be enabled to cross the track conveniently at all times.

SEC. 12. The cars, after sunset, shall be provided with proper signal lights.

SEC. 13. The said railway shall be laid down subject to the right of the city or any municipal board, to lay down, take up, change or remove any work of any kind on or beneath the surface of the streets, without any claim for damages on the part of said railway.

SEC. 14. The powers and privileges conferred by the provisions of this ordinance shall be limited to twenty years from and after the date of its passage.

SEC. 15. Cars going in the same direction shall not approach
675 each other within a distance of 100 feet, except in cases of

accident or at stations, or for the purpose of connecting two cars together.

SEC. 16. On the 1st of July and January in each year after the completion of said railway, said railway company shall pay to the treasurer of the city of Detroit a tax of 1 per cent., during the period of this ordinance, on the gross receipts collected for fares by said company for riding on said railway within the city limits, and the treasurer of said company on or before the beginning of each half year as above mentioned, shall make and deliver to said city treasurer a sworn statement of said gross receipts.

SEC. 17. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid shall be hereafter ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving and repaving, and repairing that portion of the street which lies between the outer rails of their tracks, and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said space to use either cedar blocks or cobblestones or some other similar durable and proper material, such material to be subject to the approval of the board of public works.

The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligations of said company to pay general taxes on all its property.

SEC. 18. This ordinance shall be void and of no effect unless the grantees, their associates, successors, and assigns, shall within one month from the date of the approval thereof, notify the common council, in writing, of its acceptance and shall file a good and sufficient bond in the sum of five thousand dollars, to be approved by the city controller, conditioned that the said railway shall be
676 completed within the time specified herein, and for the faithful performance of the terms of this ordinance, and shall within one year from said date have said railway completed and in operation, running sufficient cars to accommodate the public.

SEC. 19. The right is hereby reserved to the common council of the city of Detroit, to make such further rules, orders or regulations as from time to time may be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

SEC. 20. Any wilful violation of or failure to comply with any of the provisions of this ordinance shall be punished by a fine not to exceed five hundred dollars and costs; and in the imposition of such fine and costs the court may make a further sentence that the offender be imprisoned in the Detroit House of Correction or county jail until such fine and costs are paid. Provided, however, that the term of imprisonment shall not exceed the period of six months.

SEC. 21. The right to amend or repeal this ordinance in case of its violation by said company, is expressly reserved.

Approved July 13th, 1886.

M. H. CHAMBERLAIN, *Mayor.*

Attest:

WM. T. DUST, *City Clerk.*

EXHIBIT "40."

From Proceedings of Common Council of 1888, pages 617, 618.

From the mayor.

To the honorable the common council.

GENTLEMEN: I herewith return to you, without my approval and signature, an ordinance granting a franchise to W. A. Jack-
677 son, Frank E. Snow, John F. Talbot, and their associates, to operate a street railway over certain streets in Detroit.

Our street railway service has become a matter of great importance. We require added facilities and cheaper fares, and, no doubt, this necessity will keep pace with the growth of the city. The experience we have had with the franchise now operating in this city should teach us wisdom. We know they are enjoying very valuable privileges with comparatively no return advantage to the city. In granting that which is a practically and exclusive right to use a public street, we should be able either to secure by way of rental, and adequate return for the privileges, or a benefit by way of the lowest possible fares, and to accomplish these things, I believe a change should be made in our policy of granting franchises. In establishing new routes, the present and future requirements of the city should be considered, with a view of getting the greatest possible facilities while encumbering the least number of streets. * * * To accomplish this, I believe that the common council should of itself determine what new routes are necessary and specify all requirements in connection with the same. * * * The adoption of such a plan would forever remove the opportunity for scheming speculators to juggle with our streets.

To obtain the best returns, either by way of rental bonus or the lowest possible fares, it is only necessary to place every franchise, to be given hereafter, upon a fair basis of competition.

I believe that the adoption of the policy outlined above would result in cheaper fares, better service and eventually bring about the one-fare system from point to point over different lines.

Our citizens have a just ground of complaint if these val-
678 uable privileges are bartered away, irrespective of these considerations. The charge is openly made that this is done and the common council, as well as the executive head of the city, should hesitate before laying themselves open to so grave a charge.

If the localities through which the railway proposed in this franchise is intended to run are in need of such a line, then let the com-

mon council establish the route, open the franchise to fair competition, and have the same built upon its merits.

JOHN PRIDGEON, JR., *Mayor.*

Ald. Jacob moved that the communication be received, and that the vote by which the ordinance was adopted be reconsidered.

Carried as follows:

Yeas—Ald. Amos, Bleser, Burt, Fairbairn, Gilmore, Griggs, Guiney, Hartness, Hayes, Holihan, Jacob, Karrer, Kellogg, Lauder, McGuire, McIntyre, Martz, Meier, O'Regan, Peterkin, Pfeifer, Reichenbach, Reschke, Reves, Smith, Tierney, Trombly, Uthes and the president—29.

Nays—None.

Ald. Griggs moved that the matter be laid on the table.

Carried.

EXHIBIT "41."

From Proceedings of Common Council of 1888, page 674.

By Ald. Griggs:

Whereas, greater facilities and more rapid transit in street railway service in the city is a great public necessity, and

Whereas, the existing railways do not concede to the peo-
679 ple the privileges that they are justly entitled to, for the great advantages enjoyed, and

Whereas, the present seems a propitious opportunity to secure for the public a just recompense for such franchises, and

Whereas, it is considered by the mayor that the routes should be determined and laid out by the council and offered to the highest bidder; therefore,

Resolved, That a committee of five members and the president of the common council, the latter to be chairman, be appointed to lay out such street railway routes as they shall deem necessary to fully accommodate the public and advertise for proposals to equip and operate said routes. All bids to be made upon the basis of the lowest rates of fares.

Ald. Holihan moved to indefinitely postpone the whole matter.

Lost as follows:

Yeas—Ald. Holihan and Tierney—2.

Nays—Ald. Amos, Bleser, Fairbairn, Gilmore, Griggs, Guiney, Hartness, Hayes, Jacob, Karrer, Kellogg, Lally, Lauder, McIntyre, Martz, Meier, O'Regan, Pfeifer, Reschke, Reves, Trombly, Uthes, and the president—23.

Ald. Tierney moved to lay the whole matter on the table.

Lost.

Ald. Jacob moved to amend the resolution by naming three aldermen from the east and two aldermen from the west and with the president of the council.

Carried.

The resolution as amended was then adopted.

680 EXHIBIT "42."

From Proceedings of Common Council of 1888, pages 806, 807, 808.

Special Committee.

To the honorable the common council.

GENTLEMEN: Your special committee on street railways, to whom was referred the resolution of Ald. Griggs adopted at the session of the council held October 3, would respectfully report that they have given the matter careful consideration and find that there is a necessity for the establishment of street railway lines in certain portions of the city, and in accordance with your instructions, advertised for proposals for service in the territory in question, specifications for same having been published in "The Detroit Journal" from November 27 to December 1, inclusive. Only one bid was received in response to the advertisement, and we present the same herewith. In framing an ordinance every care was used to see that the interest of the city was well protected, and features were introduced which have never before been incorporated in street railway franchises, and which many claimed would practically nullify all the efforts of the committee and result in our not receiving any bids on account of the restrictions being too severe. The result demonstrates that our committee was right, and now that "the ice has been broken" there is hardly a question but what this course can be adhered to. We present herewith an ordinance for the establishment of a street railway line in conformity with the bid received, and recommend its adoption.

Your committee tried in every way to avoid the unneces-
681 sary use of streets, and endeavored to confine the route to as few streets as possible, but a glance at a map of the city will show that it is not possible to establish a line that will occupy as few streets as some lines already in existence, which is unavoidable on account of the general plan of the city.

The number of streets proposed to be occupied is far less in proportion to miles of track than are five out of eight lines of the city railway company. The line would run two miles in one street, and another portion of the route three streets only would be occupied in going four miles. The main line would occupy nine streets and the branches three streets, or an average of about one street for each mile of track. The number of streets occupied would be reduced by three if the city had retained the same reservation in previous franchises as has been inserted in this one. The saving in time on account of the increase in speed, which the council reserves the right to call for, will be of inestimable value to the people, as every one using street cars to any great extent will be enabled to save from a half to an hour's time each day. The saving in fare to those who patronize the line between the hours of six and seven a. m. and 5 and 6 p. m. would be $187.50 for each person during the lifetime of the franchise, $18,750 for each 100 persons, and on the basis that

five hundred (500) people living on the line would patronize it during these hours, the total saving would be $93,750.

Your committee feel perfectly safe in saying that the number using the line during the time mentioned would be far in excess of 500, but have thought best to take that number in order that there may be no cause to think it has been exaggerated. The benefit derived, however, would not be confined solely to persons living directly on the line of this route, but those living on the line of other routes within a reasonable proximity of the proposed
682 line would be equally benefited, as the competition would force other lines to grant the same privileges or see their traffic leaving them, which it is not reasonable to suppose they would stand without strenuous efforts to retain it. These indirect benefits would certainly amount to a sum not less than one-half a million dollars, and would bring about a radical change on the city line in the matter of speed. This is practically the first step in the direction of obtaining radical concessions from the street railway corporations in return for the great privileges they enjoy.

Your committee trust that your honorable body may approve of its action and grant the franchise recommended.

Respectfully submitted.

JOHN CONSIDINE.
S. A. GRIGGS.
FRANK N. REVES.
J. HAYES.
MIKE McGUIRE.

The following is a copy of the specifications and ordinance submitted:

Hon. John Considine, chairman of the committee of the common council:

We, the undersigned, in compliance with the specifications and ordinance adopted by the special committee of the common council of the city of Detroit, November 22d, 1888, asking for "proposals for permission to construct and operate street railways in the city of Detroit," would respectfully submit the following proposition under "plan two" of said specifications, to wit:

"2. On a thirty (30) year franchise, with overhead apparatus allowed outside the circuit of one mile from the city hall, the same to be removed and either placed under ground or disposed of
683 entirely at such time as the common council shall require all overhead wires within the circuit traversed placed under ground or removed."

We will construct, maintain and operate a street railway in accordance with and subject to the provisions and conditions contained in the said ordinance and specifications, along, in and through the first route mentioned in said specifications, to wit: "1st. Commencing on Crawford street at the city limits, thence through Crawford street to Bagg street, thence through Bagg street to Park

street, thence through Park street to Washington avenue, thence through Washington avenue to Michigan avenue, thence through Michigan avenue to Cadillac square, thence through Cadillac square on the north side of the market buildings to Congress street, thence through Congress street to Mt. Elliott avenue, thence through Mt. Elliott avenue to Jefferson avenue, thence through Jefferson avenue to the easterly city limits; also from the intersection of Cadillac square and Bates street southerly through Bates street to the Detroit river; also from the intersection of Congress street and Chene street northerly through Chene street to the city limits, and also from the intersection of Congress street and Joseph Campau avenue southerly through Joseph Campau avenue to the Detroit river."

In case the common council shall deem it advisable to change the route so as to use Clifford and Griswold streets, instead of Washington avenue and Michigan avenue west of Griswold street, or State street, Gratiot avenue and Farmer street, instead of Michigan avenue and Cadillac square, and Fort street, instead of Congress street, it shall not be considered by the bidder as a release from his bid, and agree to make the fares as specified in section five of said ordinance and fix the hours during which the fares shall be at the rate of eight tickets for twenty-five cents from six to seven
684 o'clock a. m. and from five to six o'clock p. m. of every working day; and as a guarantee that we will fulfill the requirements of this bid, we have deposited a certified check for five thousand dollars payable to the city controller as required by the specifications.

JOHN B. CORLISS,
Of the City of Detroit, Mich.
M. S. FORBUS,
Of Cincinnati, Ohio.
JOHN F. BARRY,
Of New York, N. Y.
HENRY STEERS,
Of New York, N. Y.

The following is the ordinance:

An ordinance to permit certain persons to establish and locate a street railway in and along the following streets: Commencing on Crawford street at the city limits, thence through Crawford street to Bagg street, thence through Bagg street to Park street, thence through Park street to Washington avenue, thence through Washington avenue to Michigan avenue, thence through Michigan avenue to Cadillac square, thence through Cadillac square on the north side of the market buildings to Congress street, thence through Congress street to Mt. Elliott avenue, thence through Mt. Elliott avenue to Jefferson avenue, thence through Jefferson avenue to the easterly city limits; also from the intersection of Cadillac square and Bates street southerly through Bates street to the Detroit river; also from the intersection of Congress and Chene streets northerly through Chene street to the city limits, and also from the intersection of Congress street and Jos. Campau avenue southerly through Jos. Campau avenue to the Detroit river.

685 It is hereby ordained by the people of the city of Detroit:

SECTION 1. That consent, permission and authority is hereby given, granted and duly vested in John F. Barry, Henry Steers, M. S. Forbus, John B. Corliss, and their associates, their successors and assigns, organized into a corporation under the laws of the State of Michigan, as aforesaid, to lay and operate a single-track street railway, with all the necessary and convenient side tracks, switches, turn-tables and conduits, with overhead apparatus allowed outside the circle of one mile from the city hall, the same to be removed and either placed under ground or disposed of entirely at such time as the common council shall require all overhead wires within the circuit traversed placed under ground or removed in and along the course of the streets in the city of Detroit, hereinafter mentioned, and the same to keep, maintain and use, and to operate thereon street railway cars during all the time hereinafter specified and prescribed, and in the manner and upon conditions set forth in this ordinance.

SEC. 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate a street railway on and through the following streets, viz: Commencing on Crawford street at the city limits, thence through Crawford street to Bagg street, thence through Bagg street to Park street to Washington avenue, thence through Washington avenue to Michigan avenue, thence through Michigan avenue to Cadillac square, thence through Cadillac square on the north side of the market buildings to Congress street, thence through Congress street to Mt. Elliott avenue, thence through Mt. Elliott avenue to Jefferson avenue, thence through Jefferson avenue to the easterly city limits; also from the intersection of

686 Cadillac square and Bates streets southerly through Bates street to the Detroit river; also from the intersection of Congress and Chene streets northerly through Chene street to the city limits, and also from the intersection of Congress street and Jos.

Campau avenue southerly through Joseph Campau avenue to the Detroit river.

SEC. 3. Said railway shall be operated by any electric, rapid transit or any other motive power that may be desired by said grantees, their successors and assigns, or the corporation aforesaid, except steam power, applied directly by engines or dummies, provided, however, that in case electric power is used the current of the electricity shall not exceed 500 volts, and every reasonable precaution shall be taken to secure the safety of the public, and shall be constructed under the supervision of the board of public works; and the tracks shall be laid in the center of said streets, unless otherwise ordered by the common council, and shall conform to the grade of said streets, avenues and public places, and the rails thereof shall be so laid as to least interfere with the public travel. The gauge of the track shall be standard four feet eight and one-half (4 feet 8½) inches, and the rails shall be the latest approved side-bearing patterns and with flanges, so as not to interfere with the wheels of vehicles.

SEC. 4. The cars to be used by said railway shall be run at such speed as the common council may direct, not greater than ten (10) miles per hour, and shall be run as often as the public convenience shall require and for no other purpose than to transfer passengers and their ordinary baggage.

SEC. 5. The rate of fare for a single trip shall not exceed five cents for any distance within the city limits. Said company shall issue and place on sale through their conductors to be sold at the rate of eight (8) for twenty-five (25) cents, said tickets to be
687 good for transportation over their entire line or lines between the hours of six and seven o'clock a. m. and five and six o'clock p. m., each ticket to be good for one fare. They shall sell on their cars commutation tickets at a rate not to exceed twenty-five (25) cents for six fares, and tickets for school children shall be issued and sold at a rate not to exceed twenty-five (25) cents for eight (8) fares.

SEC. 6. No car shall be allowed to stop on a cross-walk or in front of any intersecting street, except to avoid collision or prevent danger to persons or property in the street. Whenever the conductor of any car is required to stop at the intersection of the streets to receive or leave passengers, the car shall be stopped so as to leave the rear platform slightly over the crossing.

SEC. 7. The grantees or their assigns shall employ careful, sober and prudent persons who shall be qualified electors of the city of Detroit, to operate said railways, and it shall be the duty of such employés to be vigilant and watchful to protect the public from danger.

SEC. 8. Conductors shall not allow ladies or children to enter or leave the cars while in motion.

SEC. 9. Conductors shall announce to the passengers the names of the cross-streets as the cars reach them.

SEC. 10. The cars shall at all times be entitled to the tracks and

any vehicle on the track of said railway shall turn out when any car comes up, so as to leave the track unobstructed.

SEC. 11. Said grantees and their assigns shall provide and keep in repair such substantial and permanent approaches to its tracks at all points on the line of its road so that teams, vehicles and persons shall be enabled to cross the track conveniently at all times.

SEC. 12. The cars after sunset shall be provided with proper signal lights.

688 SEC. 13. The said railway shall be laid down subject to the right of the city or any municipal board, to lay down, take up, change or remove any work of any kind on or beneath the surface of the said streets without any claim for damages on the part of the said company.

SEC. 14. The powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage.

SEC. 15. Whenever the grantees, their assigns and successors, shall have organized themselves into a body corporate under said acts of the legislature of the State of Michigan, all the powers and privileges granted and conferred to and upon them by this ordinance shall be duly vested in said corporation without any further action, consent, permission or authority of the common council.

SEC. 16. Cars going in the same direction shall not approach each other within a distance of fifty (50) feet, except in case of accident or at stations, or for the purpose of connecting two cars together.

SEC. 17. The common council hereby reserves the right to grant to any other corporation or corporations, individual or individuals operating street railway line or lines, the joint use of the tracks herein provided for reasonable distances in any part or all of any street or streets specified in this ordinance. Provided, that the said privilege shall not be granted so as to materially interfere with the traffic and business of said grantees, and not until a fair compensation shall be determined therefor, such compensation, unless amicably adjusted, to be determined by arbitration by the mayor of the city and some person chosen by said grantees or their assigns, and in case of a disagreement, a third arbitrator shall be selected by them, who with them shall determine such compensation.

689 Provided, that such privileges shall not be granted to any other street railway company that is not expressly required by its charter to concede like privileges to the above grantees.

SEC. 18. On or before the tenth (10) day of July and January in each year after completion of such railway, said railway company shall pay to the treasurer of the city of Detroit a tax of one per cent. during the period of this ordinance on the gross receipts collected for fares by said company during the preceding six months ending June 30 and December 31 of each year, and the treasurer of said company, on or before the said tenth day of July and January of each year, as above mentioned, shall make and deliver to the said city treasurer a sworn statement of the gross receipts. The said company shall also pay general and municipal taxes on all of its property.

SEC. 19. On and after the date from which this ordinance shall take effect, whenever any of the streets through which the line of said railway is or may be laid shall hereafter be ordered to be paved, repaved or repaired, said company shall furnish all the materials and bear the entire expense of excavating, grading, paving, repaving and repairing that portion of the street which lies between the outer rails of their tracks, and said company shall at all times keep the same clear and in good order and condition; but said company shall have the right for the purpose of paving, repaving or repairing said spaces, to use cedar blocks or cobblestones or some other similar durable and proper material, such material to be subject to the approval of the board of public works. The foregoing special tax and undertaking as to paving shall be in lieu of license, but shall not alter the obligations of said company to pay a general tax and municipal taxes on all its property.

SEC. 20. This ordinance shall be void and of no effect unless
690 the grantees, their associates, successors and assigns shall, within one month from the date of approval thereof, notify the common council in writing of its acceptance and shall file with the city clerk a good and sufficient bond in the sum of $25,000, to be approved by the city controller, conditioned that the said railway shall be completed within the time specified herein and for the faithful performance of the terms of this ordinance and shall, before one year from the acceptance of said ordinance, have said railway completed and in operation, running sufficient cars to accommodate the public.

SEC. 21. The right is hereby reserved to the common council of the city of Detroit to make such rules, orders or regulations as from time to time may be deemed necessary to protect the interests, safety, welfare or accommodation of the public in relation to said railway.

SEC. 22. In any street where there are two or more tracks the common council shall have the right to direct and enforce the joint use of two of the tracks by all companies operating in said street and cause the removal of all other tracks.

SEC. 23. The right to amend or repeal this ordinance in case of violation by said company is expressly reserved to the common council of the city of Detroit.

Ald. Jacob moved to lay the whole matter on the table for one week.

Lost as follows:

Yeas—Ald. Amos, Finney, Guiney, Holihan, Jacob, Karrer, Kellogg, Reichenbach, Reves, Smith, Tierney, Trombly, Uthes—13.

Nays—Ald. Bleser, Burt, Fairbairn, Gilmore, Griggs, Hartness, Hayes, Lally, McGuire, McIntyre, Meier, O'Regan, Peterkin, Pfeifer, Reschke and the president—16.

Ald. Jacob moved to indefinitely postpone the whole matter.

Lost.

691 On motion of Ald. Griggs the ordinance was read twice by title and laid on the table for one week and ordered printed in the proceedings.

EXHIBIT "43."

From Proceedings of Common Council of 1888, pages 809, 810.

Third Reading of Ordinance.

On motion of Ald. Griggs an ordinance to permit certain persons to establish and locate a street railway in and along certain streets in the city of Detroit, laid over December 4, was taken from the table.

The ordinance was placed on the order of third reading.

Ald. O'Regan moved to strike out "Congress street" wherever it appears and insert "Fort street;" also insert after the words "on the north side of the market buildings" to the words "Randolph street on a curve to Fort street."

Carried.

Ald. Smith moved to strike out Mt. Elliott and Jefferson avenues.

Lost.

Ald. Jacob moved to strike out Park street.

Lost.

Ald. Tierney moved to strike out Crawford street.

Lost.

Ald. Gilmore moved to amend section 1: After the word allowed in eleventh line insert word only.

Carried.

Ald. Uthes, to strike out the word electricity and insert horses.

Lost.

Ald. Tierney moved to strike out the name of J. B. Corliss wherever it appears in the ordinance.

Lost.

692 Ald. Griggs moved to amend section 2 so as to conform with the title of the ordinance.

Carried.

Ald. Griggs offered the following amendment to section 5:

"Resolved, That section 5 be and the same is hereby amended by striking out the word six in the eighth (8) line of said section.'

Carried.

Ald. Griggs also offered the following amendment:

"Resolved, That section 5 be and the same is hereby amended by inserting the word 'five' immediately preceding the word 'and' in the eighth (8) line of said section."

Carried.

Ald. Tierney moved to make the fare charged during the whole — at three cents.

Lost.

Ald. Tierney moved to make the time two hours.

Lost.

Ald. Trombly moved to still further amend that the hours for cheap fares be from 5.15 to 6.30 p. m.

Carried.

Ald. Jacob moved to amend section 10 by inserting "reasonable time" before the words "turn out."

Carried.

Ald. Uthes moved to strike out in section 14 the word "thirty" and insert "twenty."

Lost.

Ald. Jacob moved to strike out "thirty" and insert "twenty-one" years.

Lost.

Ald. Tierney moved to strike out of section 20 the word "twenty-five" and insert the words "fifty thousand."

Lost.

693 By Ald. Griggs:

SECTION 24. This ordinance shall take effect immediately upon its acceptance by the grantees.

Carried.

By Ald. Kellogg:

Resolved, That the company accepting this franchise shall indemnify and save harmless the city of Detroit from all claims for damages by reason of the construction and operation of said road.

Lost.

Ald. Kellogg moved to lay the ordinance on the table for one week.

Lost as follows:

Yeas—Ald. Amos, Bleser, Guiney, Jacob, Kellogg, McIntyre, Martz, O'Regan, Reves, Smith, Tierney, Trombly, Uthes—13.

Nays—Ald. Burt, Fairbairn, Finney, Gilmore, Griggs, Hartness, Hayes, Holihan, Karrer, Lally, Lauder, McGuire, Meier, O'Regan, Peterkin, Pfeifer, Reichenbach, Reschke, and the president—18.

The ordinance as then amended was then adopted by the following vote:

Yeas—Ald. Burt, Fairbairn, Finney, Gilmore, Griggs, Hartness, Hayes, Holihan, Karrer, Lally, Lauder, McGuire, Meier, O'Regan, Peterkin, Pfeifer, Reichenbach, Reschke, Tierney, Trombly, and the president—21.

Nays—Ald. Amos, Bleser, Guiney, Jacob, Kellogg, McIntyre, Martz, Reves, Smith and Uthes—10.

The ordinance was then confirmed by its title.

694 EXHIBIT "44."

From Proceedings of Common Council of 1888, pages 826, 827.

Communications from City Officers.

From his honor the mayor.

To the honorable the common council:

GENTLEMEN: I return to your honorable body without my approval an ordinance granting a franchise to John F. Barry and

others to operate a street railway in certain streets of Detroit. In withholding my approval from a former franchise, I took occasion to accompany the specific objections to the measure in question with some suggestions regarding what the general policy of the city should be in the development of a thorough and comprehensive system of street railway service in Detroit.

The franchise now proposed is not only open to all the specific objections made to the former one, but it is even a more radical departure than that one was from the principles I endeavored to outline, and which the council at that time approved by a vote of 25 to 5.

I am aware that there has been a pretense in the preparation of this measure of following the programme upon which at that time the executive recommendation and the action of the council thereupon seemed to indicate a cordial agreement. The assumption that the pending franchise was passed by the common council upon a basis of fair competition or after mature consideration of its merits or defects is not justified by the history of the proceedings of the case.

First. The common council had no knowledge of the character of the ordinance prepared by the special committee and exercised no voice in determining the route outlined.

695 Second. The advertising of what the special committee of the council assumed to offer in the way of a valuable franchise was restricted to a single paper in Detroit, and only five days elapsed between the first appearance of the advertisement and the time when the bids were opened.

It is not surprising that only one bid was received by the committee. The actions of the committee had practically excluded all capital, both at home and abroad, from considering what they had to offer. No one man, or company of men could be expected to be ready with a proposition upon such short notice unless, indeed, they have been admitted to a prior and special knowledge of the character of the franchise which the committee proposed to offer. Before the people had a chance to know what was going on the franchise had been presented to the council and adopted. If there was any object in advertising at all it would seem to be for the purpose of bringing competition from as many quarters as possible. The methods adopted by the special committee clearly indicate that the committee was possessed of a desire to avoid all competition and place the franchise within the grasp of the company which it specially desired should have it.

I have shown that the ordinance was not brought before the council in a fair and proper manner. The common council received its first knowledge of the provisions of the proposed franchise on December 5th and without stopping to consider them placed the ordinance upon its first and second readings and made it ready for its final passage, which was accomplished at the following meeting, December 11th. From this record it does not appear that the valuable privileges which it is proposed to confer in this franchise, nor

the terms upon which they were to be given, or the necessity
696 of the localities through which the route is planned, were fully or carefully considered. The result of this hasty and inconsequential preparation of the measure is apparent in the defective character of the ordinance.

It purports to insure rapid transit while it does not specifically provide for anything of the kind.

It pretends to guarantee the use of electricity as a motive power, while it allows the grantees the power to use any other motive power they may see fit, except steam power applied directly to engines or dummies.

While the maximum rate of speed is plac. d at 10 miles an hour, no minimum rate of speed is specified.

Were the franchise granted in its present form the people and the council would be as utterly powerless, under its terms, to compel the use of electricity, or other rapid-transit motive power, as they now are to obtain like concessions from the existing companies. In this respect the ordinance is most defective and does not justify the principal claims upon which it rests, and upon which its passage has been urged before the council and the people.

The franchise proposes some modifications of the present fares and likewise through between the east and west limits of the city. These concessions were well worthy of favorable consideration, but I cannot understand why they should have excluded from the notice of the special committee or the council other very valuable proposals in the interest of the people, in the same direction, made by the old companies. I shall not here discuss the respsctive proposals in respect to commutations and transfers which have been offered to the council, further than to state what the whole public perfectly understand—that the propositions which the council saw fit to ignore offered to nearly the whole population of Detroit what the proposed franchise offers only to an insignificant section of the population.

697 Having thus laid before the council the specific reasons which have compelled me to withhold my approval from the proposed measure, I desire to assure the council that I have, nevertheless, used every reasonable means to ascertain the state of public opinion on the subject. The mayor's office has, during the past few days, been crowded during every business hour with citizens presenting their opinions on one side or the other, from their respective points of view. Not less than two thousand persons must have called or been represented by petition, and fully eighty per cent. protested strongly against the granting of this franchise upon the brief and careless consideration that has been devoted to the question of street-car facilities, as it now confron s us with regard to future necessities.

The completion of the Belle Isle bridge will require of the council every effort to carry the people there, by the most direct and cheapest routes. The popularity of the park with the whole people will create a great and growing patronage in the summer season for any and all facilities for transportation which will lead to it. The

old companies are not behind in appreciating the value of this travel. They are now and have for over two years past been knocking at the doors of this municipality for the privileges of accommodating that travel. The wisdom of the city officials has so far prevented them from granting the exclusive control of this valuable privilege without receiving adequate concessions. The opportunities for accommodating this travel for the next twenty-one years by means of through street-car service is confined to four streets outside of those already occupied, viz: Champlain, Fort, Congress and Larned. To occupy all the streets between Croghan and Jefferson avenue with rails is, it would seem to me, out of the question;
698 and the two, or at most three, eastern outlets to the park which remain to us should be most jealously guarded. They are the only weapons left to the city with which the old companies can be compelled to grant what the people are now clamoring for, viz: Better facilities, commutation tickets during the hours when our working people are going to and returning from work, and transportation for one fare from the extremity of one line to the extremity of any other line operated by the same company.

These benefits to the people are, I am convinced, within the reach of the council to obtain when the subject in hand shall be approached in earnest and with an honest purpose and determination to do all possible for the interests of the people.

In conclusion, gentlemen, I desire to again call attention to the importance of making the life of all future street railway franchises contemporaneous with what remains of the life of the principal existing main lines, so as to preserve for the people of Detroit twenty-one years hence the opportunity which is now denied us of making the best possible arrangement for street railway facilities.

JOHN PRIDGEON, JR., *Mayor.*

Accepted, and the vote by which the ordinance was adopted was reconsidered as follows:

Yeas—Ald. Amos, Bleser, Burt, Fairbairn, Finney, Gilmore, Griggs, Guiney, Hartness, Hayes, Holihan, Jacob, Karrer, Kellogg, Lally, Lander, McGuire, McIntyre, Martz, Meier, O'Regan, Peterkin, Pfeifer, Reichenbach, Reschke, Reves, Smith, Tierney, Trombly, Uthes, and the president—31.

Nays—None.

Ald. Finney moved the ordinance pass notwithstanding
699 the veto of his honor the mayor, which motion did not prevail, as follows:

Yeas—Ald. Burt, Finney, Gilmore, Griggs, Hayes, Holihan, McGuire, O'Regan, and the president—9.

Nays—Ald. Amos, Bleser, Fairbairn, Guiney, Hartness, Jacob, Karrer, Kellogg, Lally, Lauder, McIntyre, Martz, Meier, Peterkin, Pfeifer, Reichenbach, Reschke, Reves, Smith, Tierney, Trombly, Uthes—22.

EXHIBIT "45."

From Proceedings of Common Council of 1889, pages 31, 32, 33.

An ordinance supplementary to an ordinance entitled "An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862," and supplementary to amendments and supplements thereto, and supplementary to an ordinance entitled "An ordinance supplementary to an ordinance entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, approved November 24, 1862, and to the amendments thereto, and for other purposes," approved November 14, 1879, and all amendments and supplements thereto.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of chapter 98 of the Revised Ordinances of the City of Detroit for the Year 1884, and of amendments thereof, and supplements thereto, and of an ordinance entitled "An ordinance supplementary to an ordinance, entitled An ordinance to permit certain persons to establish and locate street railways in the city of Detroit, ap-
700 proved November 14, 1879," and all amendments and supplements thereto, the Detroit city railway is hereby authorized and permitted to lay, construct, use and operate a street railway with convenient tracks for turnouts, side tracks, curves and switches in and through the following streets and avenues in the city of Detroit and the same to keep, maintain and use and to operate thereon street railway cars in the manner and subject to the conditions herein contained and to all the requirements and conditions set forth in chapter 98 of the Revised Ordinances of 1884 and in the said ordinance and amendments and supplements thereto, viz:

Commencing at a point on Congress street east where its present track on said Congress street east turns onto Randolph street, connecting herewith, running thence easterly along said Congress street east to its intersection with Brush street, thence northerly along Brush street to its intersection with Fort street east, thence easterly along said Fort street east to Mt. Elliott avenue, -hence along said Mt. Elliott avenue to the Jefferson avenue double track, thence along said Jefferson avenue double track to the easterly limits of the city.

Also, to extend its track on Cass avenue from where it now turns onto Ledyard street, northerly in, along and through said Cass avenue to the Detroit & Bay City Railroad crossing.

Also, to extend its double street railway track in, along and through Jefferson avenue from the present easterly terminus of its double track on said Jefferson avenue to the easterly limits of the city of Detroit.

Also, to lay, construct, use and operate an additional track on Gratiot avenue from Monroe avenue to the easterly limits of the

city of Detroit, so that a double track may be laid, used and operated through the entire length of said Gratiot avenue.

701 Also, to lay, construct, use and operate a single street railway track in, along and through Mack street from its conjunction with Gratiot avenue, in an easterly direction along said Mack street to the city limits.

Also, to connect the tracks on Michigan avenue by suitable extensions and curves with the present track on Monroe avenue, so that cars may be brought through and over the same between the said two streets.

Also, to lay, construct, use and operate a single street railway track in, along and through the following streets and avenues, viz: Commencing at a point on Joseph Campau avenue near the bank of the Detroit river, running thence northerly along said Joseph Campau avenue to its intersection with Atwater street, thence in a westerly direction along said Atwater street to its intersection with Chene street, thence in, along and through Chene street in a northerly direction to the city limits.

Also, permission is hereby granted to the said Detroit city railway, if it shall desire so to do, to run its cars from any of its lines over and upon any street railway track which may be authorized and constructed on the bridge and approaches thereto, to Belle Isle park, to said park, with all the privileges and rights which may be granted to any other street railway.

SEC. 2. The track hereby authorized on Congress, Brush and Fort street-east shall be constructed and in operation within one year from the date of the passage of this ordinance; and cars shall be run thereon often enough to fully accommodate public travel; and the double track authorized to be laid on Jefferson avenue shall be constructed and in operation within six months from the date of the passage of this ordinance. The track authorized to be constructed on Joseph Campau avenue, Atwater and Chene streets shall be constructed and in operation within one year from

702 the date of the passage of this ordinance. The double track hereby authorized on Gratiot avenue shall be constructed and in operation to Mt. Elliott avenue within one year from the date of the passage of this ordinance, and to the city limits contemporaneously with the pavement of said Gratiot avenue beyond the present pavement; and the track hereby authorized to be laid on Mack street shall be constructed and in operation within one year from the date of the passage of this ordinance. The track hereby authorized to be laid on Cass avenue shall be constructed within such time as shall be hereafter directed by the common council.

SEC. 3. Permission and authority is hereby given to the said Detroit city railway to run its cars at a rate of speed not exceeding ten miles an hour, and is hereby required to run thereon at an average speed of not less than six miles per hour, and whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said city of Detroit upon any or all of its said lines now

in use and operated or hereafter to be in use and operated by said company, said change to be made under the supervision of the board of public works.

SEC. 4. The above-mentioned additional lines shall be operated in connection with and as part of the present system of the Detroit city railway, but the permission and authority hereby given shall be inoperative and void, unless the said Detroit city railway shall file a written acceptance thereof within 30 days from the date of the passage of this ordinance, in which the said company shall agree to do and perform the following with reference thereto, to wit:

A. It shall carry passengers from its Cass Avenue & Third
703 Street, Trumbull Avenue, Michigan Avenue and Congress & Baker Street lines to any point on the proposed line on Fort street east, or to the easterly terminus thereof, for a single fare of five cents for one continuous trip, and from the easterly terminus of the proposed line on Fort street east, or from any point thereon, to any point on Congress & Baker streets, Michigan Avenue, Trumbull Avenue, and Cass Avenue & Third Street lines for a single fare of five cents for one continuous trip.

A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Joseph Campau, Atwater and Chene streets shall be entitled to be transferred at Fort street to and conveyed by cars running on the proposed line on Fort street east to any portion on said Fort Street line in one continuous trip or to be transferred at Gratiot avenue to the line on said Gratiot avenue to be carried to any point on said Gratiot Avenue and Michigan Avenue lines in one continuous trip. A passenger paying a single fare of five cents on the line hereby authorized to be constructed on Fort street east shall be transferred at Chene street to said Chene Street line and carried to any point thereon in one continuous trip. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to be transferred at Chene street to said Chene Street line and to be carried to any point thereon in one continuous trip.

B. A passenger paying a single fare of five cents on the Gratiot Avenue line shall be entitled to a continuous ride over said Gratiot Avenue line and proposed lines on Chene street and Fort street to the Belle Isle bridge; and from the Belle Isle bridge in reverse direction, over the Fort Street east, Chene Street and Gratiot Avenue lines for a single fare of five cents for one continuous trip.

C. It shall arrange for and carry out an interchange of traffic on the Michigan and Gratiot Avenue lines, either by transfer of
704 passengers or by running through cars, so that passengers will be carried from any point on either of said roads to any point on the other for a single fare of five cents for one continuous trip.

D. Such arrangements shall be made by said company that within two months after this ordinance shall have been accepted by said company it shall carry such passengers as shall have taken passage on the cars between the hours of 5.30 o'clock and 7 o'clock in the morning, and between the hours of 5.15 o'clock and 6.15

o'clock in the afternoon over any of its lines in said city for a single fare to be paid for by a ticket sold at the rate of eight tickets for twenty-five cents, for one continuous trip, with all the rights of transfer and through carriage provided for in paragraphs "A," "B" and "C" of this section.

E. It shall within six months take up and remove its turn-table now at the intersection of its Jefferson and Woodward Avenue lines, and shall run the cars on the said Woodward Avenue lines to the foot of Woodward avenue, and shall construct and maintain all necessary and convenient tracks for switching purposes south of Atwater street on said Woodward avenue.

SEC. 5. All rights conferred and obligations imposed under the terms of this ordinance shall continue during the period fixed by the ordinance approved November 14, 1879, that is to say, until November 14, 1909.

SEC. 6. It is hereby reserved to the common council of the city of Detroit, the right to make such further rules, orders or regulations as may from time to time be deemed by the common council necessary to protect the interests, safety, welfare or accommodation of the city and public in relation to said railway.

SEC. 7. This ordinance shall take immediate effect when said Detroit city railway shall have filed with the city clerk a written acceptance of the same and shall execute a bond to the city
705 of Detroit in the sum of $50,000, to be approved by the common council, conditioned for the faithful performance of the terms of this ordinance; provided, that such written acceptance and bond shall be filed within thirty days of the approval of this ordinance by the mayor.

Approved January 3, 1889.

JOHN PRIDGEON, JR., *Mayor.*

Attest:

A. G. KRONBERG, *City Clerk.*

EXHIBIT "46."

This agreement, made and entered into this twenty-fourth day of May, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company, and the Detroit railway, hereinafter called the Detroit Company, witnesseth:

That, whereas, said Citizens' Company owns and operates certain lines of street railway in the city of Detroit, and the said Detroit Company is about to commence the construction and operation of street railway lines in certain other streets in said city, which said several lines of street railway in many places cross each other, and especially Warren and Trumbull avenues, Forest and Trumbull avenues, Warren and Greenwood avenues, Forest and Greenwood avenues, Third and Forest avenues, Third and Warren avenues, Grand River and Warren avenues, Grand River and Fourteenth avenues, Grand River avenue and Bagg street, Grand River avenue and Locust street, as shown on the blue print attached hereto, and

it becomes necessary to construct safe and satisfactory crossings in the tracks.

706 Now, therefore, it is agreed that whenever the Detroit Company shall desire to cross the existing tracks of the Citizens' Company, at the points above named, the Detroit Company shall furnish all the material and labor, and pay all the expenses of construction including the concrete foundation paving, rails and other materials to be at the whole cost and expense of the first construction of said crossings complete.

Said crossings shall be so constructed with reference to insulation, as not to interfere with the proper transmission of current on the line of the road crossed, and to that end among other things, the rails of the Detroit Company are to be insulated by placing thin sheets of mica between the fish-plates and the sides of the rail, and also at the ends of the rails, and copper conductors shall be placed under the crossings, or on the poles overhead, properly insulated, and extending from the rails of the Detroit Company one one side of the crossing to its rails on the other.

The Detroit Company shall do the work at a time most convenient for the Citizens' Company, so as to interfere as little as possible with the running of cars thereon, and the work shall be pushed as rapidly as possible, and shall not be entered upon until all material is on the ground for the same.

If it is necessary during the construction of a crossing that cars shall be pushed over the intersection, the Detroit Company shall furnish and pay the necessary men for that purpose, and provide a suitable way for getting teams and horses around the crossings, and on horse-car lines to put in cross-ties as soon as possible in such a way as to allow horse-cars to be used thereon until the paving is completed.

707 The Detroit Company shall make a suitable joint between the rails of the Citizens' Company on each side of the crossing by using the same fish-plate as is used by the Citizens' Company, or by making an electric-welded combination joint, or a satisfactory combination fish-plate to fit each rail; except where a flat rail is in use, it shall put in a suitable casting to hold each rail.

It is mutually agreed that after such crossings are constructed as required by this agreement, each company shall pay one-half of the cost of maintaining the same.

The Citizens' Company is to have the right to at any time, hereafter, rearrange or make any change in their tracks that may be required, either by substituting single for double tracks, or substituting double for single tracks, or to make any other substitution, alteration or changes, that it may desire. When such changes are made all the provisions of this contract prescribing the obligations of the Detroit Company, when making crossings on the tracks of the Citizens' Company shall, in like manner, relate to and prescribe the obligations of the Citizens' Company. The intent being that all such provisions shall be reciprocal, and bind each party alike under like

circumstances. The work of changing or rearranging to be paid for wholly by the Citizens' Company, except the work of insulation at the ends of the rails, and the carrying of the insulated copper conductors under the track or on the poles overhead, which the Detroit Company is to do, at its own cost and expense when any such changes are required by the Citizens' Company.

All rails and materials thrown out of use by any such changes shall belong to the company putting the same in in the first instance; and when rails and materials so thrown out of use by such changes were put in at joint cost of the two companies, then such rails and materials shall belong to both companies.

708 It is agreed that at the crossings at Grand River and Warren avenues, Grand River and Fourteenth avenues, Grand River avenue and Bagg street, and Grand River avenue and Locust street, the Citizens' Company's tracks shall be constructed with through rails, and with no rail to connect with said crossing, less than fifteen feet long, the section to be girder groove section, eighty-five pounds to the yard, the same as the Detroit Company are using on the balance of their tracks; and no risers to be put in the Citizens' Company's tracks, and the opening to allow the flange of the wheel to go through the Citizens' Company's rail, not to be over one and one-fourth inches broad, and not over three-quarters of an inch deep; the Citizens' Company to have the top rail in the lap crossings. The two crossings at Grand River and Fourteenth avenues, and Grand River and Warren avenues, are to be changed to the foregoing construction before the street is paved, as it is now open. The specific requirement of this contract as to the style of construction of the crossings at four points, shall not bind the Citizens' Company to accept the style of crossings put in, or to be put in, by the Detroit Company, at the other six points named in this contract, to which the Citizens' Company has objected.

Each company shall give notice in writing, accompanied by a blue-print plan of the proposed work, of its intention to construct any crossing, or rearrange or change the same as provided for in this contract, at least twenty-four hours before the commencement of the work.

It is agreed, that, in entering into this contract, neither of said companies waives any of the claims which it has made, in the suit now pending in the circuit court for the county of Wayne, in chancery, in which the said Citizens' Company is complainant, and the said Detroit Railway, and The City of Detroit are defendants, and in which the bill of complaint was filed on the 14th day of December, A. D. 1894, being chancery files, number fifteen thousand and thirty.

709 In witness whereof, the board of directors of each corporation, has authorized the execution of this contract by their respective presidents or vice-presidents, and the placing of the corpo-

rate seal of each corporation thereon, duly attested by the secretary thereof.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
By TOM L. JOHNSON, *President, and*
A. E. PETERS, *Secretary.*
[SEAL.]
THE DETROIT RAILWAY,
By H. A. EVERETT,
Vice-President, and
——— ———, *Secretary.*

EXHIBIT "47."

In re Second Crossing Contract.

This agreement, made and entered into this first day of June, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company, and the Detroit railway, hereinafter called the Detroit Company.

Witnesseth:

That whereas, the Citizens' Company owns and operates certain lines of street railway in the city of Detroit, and is about to construct other lines, and the said Detroit Company is about to commence the construction and operation of street railway lines
710 in certain other streets in said city, which said several lines of street railway in many places cross each other.

And whereas, for convenience, the crossings and connections provided for in this agreement are hereinafter named in separately numbered classes, as follows:

Class one—being the special work at the intersection of
Chene and Forest avenue,
Farnsworth and Hastings streets,
St. Antoine and Forest avenue,
Congress and Bates streets,
Atwater and Bates streets,
Larned and Shelby streets,
Congress and Shelby streets,
Cass and Henry streets,
Trumbull avenue and Porter street,
Dix and Scotten avenues,
Brush street and Adams avenue,
Michigan and Scotten avenues,
Randolph and Macomb streets,
Gratiot and Mt. Elliott avenues,
Monroe avenue and Farmer street,
Myrtle street and Fourteenth avenue, now in place,
Trumbull and Forest avenues, " "
Trumbull and Warren avenues, " "
Greenwood and Forest avenues, " "
Greenwood and Warren avenues, " "
Third and Forest avenues, " "
Third and Warren avenues, " "

Class two—being the special work at the intersection of
Woodward and Warren avenues,
Woodward and Forest avenues,
Chene and Sherman streets,
Chene and Catherine streets,
711 Michigan avenue and Shelby street.
Class three—being the special work at the intersection of
Trumbull avenue and Locust street,
Trumbull avenue and Bagg street,
Greenwood avenue and Bagg street,
Third avenue and Bagg street.
Class four—being the special work at the intersection of Mack and Mt. Elliott avenues.
Class five—being the special work at the intersection of
Woodward avenue and Woodbridge street,
Jefferson avenue and Bates street,
Jefferson avenue and Griswold street,
Griswold and Woodbridge streets.
Class six—being the special work at the intersection of
Fourth and Warren avenues,
Fourth and Forest avenues,
Fourth avenue and Bagg street,
Magnolia street and Fourteenth avenue,
Rivard street and Forest avenue,
Russell street and Forest avenue.

Now therefore, it is agreed that the crossings of the first class referred to above are to be put in under the following conditions and stipulations:

The Citizens' Company's tracks at said crossings are soon to be reconstructed and in many cases changed in position, and from single to double track; the Detroit Company may put in temporary crossings, constructed to the reasonable satisfaction of the Citizens' Company, so that cars can pass smoothly over the same. The Detroit Company may run their girder-groove rail through the Citizens' Company's track at said crossings, putting in concrete foundation under the ties of the same. The Detroit Company, in consideration of the permission to make temporary
712 crossings, agrees that the Citizens' Company may order from the Johnson Company, at its convenience, permanent crossings of its nine-inch guaranteed work, to be in at said intersecting points and the Detroit Company is to pay the Johnson Company for such crossings, when the special work is delivered on the ground, for each single track crossing a single track, according to the following prices, which include freight and hauling:

Where angle is between 70 and 90 degrees	$175 00
Where angle is between 50 and 70 degrees	185 00
Where angle is between 45 and 50 degrees	200 00
Where angle is between 40 and 45 degrees	215 00
Where angle is between 35 and 40 degrees	235 00
Where angle is between 30 and 35 degrees	260 00

Or at such lower price as the Johnson Company shall be selling goods of equal quality at the time of ordering the same. And the Johnson Company shall make a contract with the Detroit Company, to warrant and defend it against any loss or damage, on account of infringement of patent, in connection with such special work, purchased of the Johnson Company.

In addition to the foregoing, the Detroit Company agrees to pay the Citizens' Company sixty dollars ($60.00), which is the agreed-upon cost of labor and material used in putting in each single track crossing a single track, including additional concrete under the crossings, ties, labor and paving within the Citizens' Company's track and eighteen (18) inches outside. The Detroit Company shall, at its own cost, furnish all the labor and material to connect its track with the said crossings when put in by the Citizens' Company, including the paving and concrete on each side of the work to be done by the Citizens' Company.

The amount which the Detroit Company is to pay the Citi-
713 zens' Company of sixty dollars ($60.00), and to the Johnson Company at the above rates at each intersection, is the price where a single track crosses a single track; to be double that price where a single track crosses a double track, and four times that price where a double track crosses a double track; and at the same rate per single-track crossing for other intersections.

That, for the special work at the last six (6) intersections named in the said first class, the Citizens' Company shall pay one-half (½) of the cost, provided for in this agreement.

It is further agreed, that the crossings of the second class are to be put in under the following conditions and stipulations:

The Citizens' Company's tracks shall be constructed with through rails or with rails halved together, the Citizens' Company to have the top rail, no rail connecting with the said crossings with the Citizens' Company's track on each side of the same to be less than fifteen feet in length, except as herein otherwise provided; the sections to be the girder-grooved section, 85 pounds to the yard, the same as the Detroit Company is now using on the balance of their track. No risers to be put in the Citizens' Company's track and the opening to allow the flange of the wheel of the Detroit Company to go through the Citizens' Company's rail is not to be over 1⅛ inches broad, and not over ¾ of an inch deep.

All the labor and material necessary to put in said crossings, and connect the same with the Citizens' Company's tracks on each side of the crossings, including the concrete foundation and repaving the street so as to leave it in the same condition as it was when the work was entered into by the Detroit Company, is to be at the sole cost and expense of the Detroit Company. All rail taken out of
714 the Citizens' Company's track and replaced by said crossings shall be turned over to the Citizens' Company at the place where taken out.

The Detroit Company shall make, at its own cost, and to the reasonable satisfaction of the Citizens' Company, a suitable joint between the rails of the Citizens' Company's track and the crossings

and connections on each side of each crossing or connection, by using the same fish-plate as is used by the Citizens' Company, or by making an electric-welded combination joint or a combination fish-plate joint; or, where flat rails are used in the Citizen Company's track, a cast-iron flat-rail pocket joint to be bolted onto the end of the flat rail and to the crossing.

It is further agreed that the crossings of the third class are to be put in under the following conditions and stipulations:

The crossings are to be made of side-bearing girder rail, seven inches deep, the Citizens' Company to have the through rail, no rail connecting with the said crossings with the Citizens' Company'- track on each side of the same to be less than 15 feet in length, except as herein otherwise provided. No risers to be put in the Citizens' Company's track, and the opening to allow the flange of the wheel of the Detroit Company to go through the Citizens' Company's rail is not to be over $1\frac{1}{8}$ inches broad and not over $\frac{3}{4}$ of an inch deep.

All the labor and material to put in said crossings and connect the same with the Citizens' Company's tracks on each side of the crossings, including the concrete foundation and repaving the street, so as to leave it in the same condition as it was when the work was entered into by the Detroit Company, is to be at the sole cost and expense of the Detroit Company. All rails taken out of the Citizens' Company's track and replaced by said crossings, shall
715 be turned over to the Citizens' Company at the place where taken out.

The Detroit Company shall make, at its own cost, and to the reasonable satisfaction of the Citizens' Company, a suitable joint between the rails of the Citizens' Company's track and the crossings and connections on each side of each crossing or connections, by using the same fish-plate as is used by the Citizens' Company, or by making an electric-welded combination joint, or a combination fish-plate joint; or where flat rails are used in the Citizens' Company's track a cast-iron flat-rail pocket joint, to be bolted on to the end of the flat rail and to the crossing.

It is further agreed, that the crossings of the fourth class are to be put in under the conditions and stipulations required in crossings of the third clase, with the exception that the Detroit Company is to have the through rail.

It is further agreed, that the crossings and connections of the fifth class are to be put in under the following conditions and stipulations:

At Woodward avenue and Woodbridge street, three (3) single track crossings are to be constructed, one curve from Woodward avenue into Woodbridge street to the west and one to the east. The Detroit Company is to pay for the three single-track crossings at this point, as provided for in crossings of the first class; the Citizens' Company to pay for all the balance of the special work at said intersections. In all other respects, the terms and conditions governing crossings of the first class shall apply to this special work.

At Jefferson avenue and Bates street, two (2) single-track cross-

ings and one (1) curve, to be same as above, except that the Citizens' Company pays for the curve and putting in of same.

716 At Jefferson avenue and Griswold street there are to be three curves. The Detroit Company is to pay for one curve the sum of seven hundred and thirteen dollars and sixty-eight cents ($713.68) to the Johnson Company and five hundred and sixty-four dollars and eighty-one cents ($564.81) for the work of putting in the curve, the Citizens' Company paying for the other two.

At Griswold and Woodbridge streets, one (1) curve, to be paid for entirely by the Detroit Company, four hundred and twenty dollars and ninety-six cents ($420.96) to the Johnson Company, and four hundred and fifty-eight dollars and eighty-five cents ($458.85) to the Citizens' Company.

It is further agreed, that in crossings of the sixth class, the Citizens' Company is to put in the work as provided for in crossings of the first class, and following all the conditions and stipulations of same, except that the whole cost and expense is to be borne by the Citizens' Company, and the Citizens' Company shall make, at its own cost and to the reasonable satisfaction of the Detroit Company, a suitable joint between the rails of the Detroit Company's tracks and the crossings and connections on each side of each crossing and connection, by using the same fish-plate as is used by the Detroit Company, or by making an electric-welded joint, or a combination fish-plate joint. No rails of less than fifteen feet in length to be put in the Detroit Company's track, on each side of said crossing.

General Provisions.

Applicable to all classes.

No crossings, connections or special work shall be considered as coming under this contract, except at the intersection of the streets named in the preamble hereof.

717 The Detroit Company is to keep all temporary crossings and connections in repair until the permanent work is put in. Failure to do the same after two (2) days' written notice by the Citizens' Company shall entitle the Citizens' Company to make said repairs at the expense of the Detroit Company.

In all crossings and connections of the first five classes, the Detroit Company, at its own cost and expense, shall insulate, as far as practicable, their tracks from the said crossings and connections, so as not to permit the ground return of the Citizens' Company to be used by the Detroit Company; and in the sixth class, the Citizens' Company, at its own cost and expense, shall insulate, as far as practicable, their tracks from the said crossings and connections, so as not to permit the ground return of the Detroit Company to be used by the Citizens' Company.

The plan of insulation to be adopted by each company shall be as follows: Thin sheets of mica shall be placed between the fish-plates and the sides of the rail and also at the ends of the rails and

around the bolts, and proper insulated copper conductors shall be placed under the crossings or on the poles overhead and extend from the rails on one side of the crossings and connections to the rails on the other side of the same.

All work at crossings and connections done by either company shall be at a time most convenient to the other, so as to interfere as little as possible with the running of cars thereon, and the work shall be pushed rapidly and shall not be entered upon until all the material is on the ground for the same.

If it is necessary, during the construction of crossings or connections, that cars shall be pushed over, the company putting in the work shall furnish and pay the necessary men for that purpose, and provide a suitable way for getting teams and horses around the crossings or connections; and on horse-car lines to put in
718 bridges as soon as possible, in such a way as to allow horses attached to the cars to be used thereon until the paving is completed.

It is mutually agreed, that after the permanent work is constructed at all crossings and connections, that each company shall pay one-half of the cost for repairs and renewals necessary to maintain the same.

All rails and material thrown out of use by the work at any intersection, shall belong to the company putting the same in originally, and when rails and material so thrown out of use by such change were put in at the joint cost of such companies, then such rails and materials shall belong to the two companies jointly.

Each company shall give notice in writing of its intention to construct any crossing or connection, at least twenty-four (24) hours before the commencement of work.

Each company shall furnish to the other a plan of the work at each intersection, to be by the other approved within five (5) days before the same is ordered, and the company receiving same shall, within that time, suggest any changes or alterations that may be necessary in the same, the burden of proof being on the company receiving the plan to show that there is any defect. If not approved, or the defect shown within the five days, it shall stand as being approved and the company submitting the same is authorized to proceed with the work under the said plan.

All payments to the special work-makers shall be on sight drafts attached to the bills of lading. All payments of one company to the other shall be within ten (10) days after the work is completed and the proper bill of the same mailed to the other company. Failure to make any payment due to either the companies or to the makers of the special work, within the time specified, shall entitle
719 the other company to interest at the rate of eight per cent. (8%) per annum.

All drains at intersections or connections required by the board of public works shall be paid for jointly.

The Detroit Company is to pay the Citizens' Company the sum of two hundred and fifty dollars ($250.00) at the time of the execution of these papers, in consideration of the agreement of the Citizens'

Company to remove the cross-over track at the intersection of Woodward and Forest avenues, on three days' written notice from the Detroit Company.

Wherever, in this contract, it is hereinbefore provided, that the Detroit Company is to pay to the Citizens' Company for putting in special work; and in which sums were fixed to be paid, it was on the basis of sixty dollars ($60) for every ten feet square of work; the true intent and meaning of this contract as to such payments being to pay actual cost, whether more or less; and the said amount being merely an estimate, and presumptively correct. Either party shall have the right to complain, or ask for itemized and verified statements of the cost.

It is agreed that, in entering into this contract, neither company waives any of the claims which it has made in the suit now pending in the circuit court for the county of Wayne, in chancery, in which The Detroit Citizens' Street Railway Company is complainant, and the said Detroit Railway and The City of Detroit are defendants; and in which the bill of complaint was filed on the fourteenth day of December, 1894, being chancery file number 15030.

In witness whereof, the said the Detroit Citizens' Street Railway Company hath executed these presents by the hand of its president and secretary, and the said the Detroit railway hath executed these presents by the hand of its vice-president and secretary, both
720 of said companies affixing their official seals hereto, on this first day of June, A. D. 1895.

DETROIT CITIZENS' STREET RAILWAY COMPANY,

(Signed) By TOM L. JOHNSON, *President.*
[SEAL.] A. E. PETERS, *Secretary.*

DETROIT RAILWAY,

(Signed) By H. A. EVERETT, *Vice-President.*
[SEAL.] ALBERT PACK, *Secretary.*

EXHIBIT "48."

In re Exchange of the Use of Electric Current.

This agreement, made and entered into this twenty-fourth day of May, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company, party of the first part, and the Detroit railway, hereinafter called the Detroit Company, party of the second part—

Witnesseth:

That, whereas, the Citizens' Company now owns and operates lines of electric street railway in the city of Detroit, and proposes to extend the use of electricity over its other lines; and whereas, the Detroit Company is now constructing lines of electric street railway in said city.

And, whereas, said companies have already entered into contracts, providing for the joint use of parts of their said lines; and expect to make further contracts, touching such joint use of crossings and intersections.

721 Now, for the purpose of providing for the interchange of electric current at such points and places; and to adjust the relative rights and liabilities of the several parties, in respect thereto, it is hereby agreed, as follows:

Each party shall have the right to use the poles and trolley and span wires erected by the other at intersecting and converging points, without charge.

Line-dividers, switches and other necessary electrical appliances shall be erected by either company which desires to cross the electric line of the other; the company making such crossing to pay the expense, except that the Detroit Company is to pay this expense at all crossings of the Michigan and Gratiot Avenue lines, each party to maintain the work put in by it.

All trolley-wire intersections shall be constructed upon a plan which shall be mutually agreed upon, and which shall be considered standard throughout.

Each company shall use positive pole to the line and shall in attaching feed-wires to the poles of the other company, use an approved insulating device, satisfactory to the other company. Line-dividers shall be placed as near the trolley wire as possible, so that each company shall use as much of its own current as possible. Each company shall insulate, according to the best known method, its current from the current of the other company. The tracks of each company at connecting points, as provided in other contracts, shall be insulated, as far as possible, from the tracks of the other company.

Each party shall use the electric current of the other at such crossing or diverging points, or along tracks where it is provided in other contracts that the cars of each company shall use jointly, the same tracks. Each party shall furnish electric current at all times, sufficient for the operation of cars over its part of such track; but either party shall have, at any time, the right to switch in its current, into the line of the other, over such jointly used track,

722 in case of the failure of that company to furnish current.

Itemized reports shall be made to each company by the 10th of the month, of the number of car miles of motors and trail cars run by the current of the other company; and such report to be made, not later than the 10th of each month. Failure to make the report by the required time, entitles the other party to make such report from its best obtainable information. All reports shall be considered binding unless the other party files written objection to them, within ten days, the burden of proof of any errors being on the party making objection. Each party shall notify the other, in writing, of the fact, within twenty-four hours after switching the current in or out.

The difference in electric current furnished each party by the other, shall be paid for at the rate of two and one-half ($2\frac{1}{2}$) cents per car mile, including trailers as cars, within sixty (60) days after the bill therefor is rendered, unless within that sixty days they furnish a sufficient current to repay the other party such excess of

current, by switching into some jointly used track a sufficient amount of current to repay the same, in the time mentioned.

This contract to continue during the corporate existence of the two companies.

It is agreed, that, in entering into this contract, neither of said companies waives any of the claims which it has made, in the suit now pending in the circuit court for the county of Wayne, in chancery, in which the said Citizens' Company is complainant, and the said Detroit Railway and The City of Detroit are defendants; and in which the bill of complaint was filed on the fourteenth day of December, A. D. 1894, being chancery file number fifteen thousand and thirty.

In witness whereof the board of directors of each corporation has authorized the execution of this contract by their respective
723 presidents or vice-presidents, and the placing of the corporate seal of each corporation thereon, duly attested by the secretary thereof.

(Signed) DETROIT CITIZENS' STREET RAILWAY COMPANY,
By TOM L. JOHNSON, *President, and*
[SEAL.] A. E. PETERS, *Secretary.*
THE DETROIT RAILWAY,
By H. A. EVERETT,
Vice-President, and
ALBERT PACK, *Secretary.*

EXHIBIT "49."

In re Third Track on Jefferson Avenue between Griswold and Shelby.

This agreement, made and entered into this twenty-fourth day of May, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company and the Detroit railway, hereinafter called the Detroit Company, witnesseth:

That, whereas, the Citizens' Company owns and operates a double-track street railway in Jefferson avenue, between Griswold and Shelby streets in the city of Detroit, and the said Detroit Company claims the right to construct a third track in Jefferson avenue, between said points, and both companies are desirous of avoiding the necessity of more than two tracks at said point,

Now, therefore, it is agreed that when the Detroit Company
724 constructs tracks in Shelby street to Jefferson avenue, the Citizens' Company hereby consents that the Detroit Company may connect with a proper curve, at its own expense, the south track on Jefferson avenue with its said track in Shelby street; and also at its own expense, to connect with proper curve the south track on Jefferson avenue with the said Citizens' Company's track in Griswold street south of Jefferson avenue, and run cars thereon easterly along Jefferson avenue from Shelby street to Griswold street.

In event of said Detroit Company being required by the city of Detroit to construct said additional or third track on Jefferson

avenue, such construction shall not operate to terminate this contract, or make a forfeiture of the rights of either company under this contract.

Before any connection is constructed, or the material ordered for the same, to be put in by either company between the tracks of the other company, a detail plan showing the kind of rail and construction of the switch pieces and crossings shall be submitted to the other company and approved by it; and the company making such connection shall furnish all the material and labor, and pay all the expenses of construction, including the concrete foundations, paving, rails and other materials, and be at the whole cost and expense of the first construction of said connections complete, and all renewals, repairs and reconstructions thereof.

Such crossings and connections shall be so constructed with reference to insulation as not to interfere with the proper transmission of current on the line of the road connected with, and to that end, among other things, the rails of the connecting company are to be insulated by placing thin sheets of mica between the fish-plates and the sides of the rail, and also at the ends of the rails.

The connecting company shall do the work at the most con-
725 venient time for the other company, so as to interfere as little as possible with the running of the cars thereon, and the work shall be pushed as rapidly as possible and shall not be entered upon until all the material is on the ground for the same.

If it is necessary during the construction of a connection, that cars shall be pushed over the connecting point, the connecting company shall furnish and pay the necessary men for that purpose, and provide a suitable way for getting teams and horses around the point of connection, and also put in cross-ties as soon as possible, in such a way as to allow the horse cars to be used thereon, until the paving is completed.

In consideration of the premises, the Detroit Company hereby grants to the Citizens' Company the right to use the single track which said Detroit Company is to construct in Bates street between Woodbridge and Atwater streets, including the use of the curves at Jefferson and Griswold, Bates and Woodbridge, and also grants to the Citizens' Company the right to construct the necessary curves at its own expense, to connect the tracks of one company with the track of the other on Atwater and Bates streets, and at the intersection of the tracks at Woodward avenue and Woodbridge street and to use the curves of the Detroit Company running into Bates street. Neither company to pay the other anything for the use of track, curves or overhead construction; the use of current being provided for in a separate agreement.

The term "connecting company" herein used, means the company which shall desire to connect or make connections with the existing tracks of the other.

Except as herein otherwise provided, this contract shall be operative during the corporate existence of the two companies.

It is agreed that in entering into this contract, neither
726 company waives any of the claims which it has made, in the suit now pending in the circuit court for the county of Wayne, in chancery, in which the said Citizens' Company is complainant, and the said Detroit Railway and The City of Detroit are defendants, and in which the bill of complaint was filed on the fourteenth day of December, A. D. 1894, being chancery file No. 15030.

In witness whereof, the board of directors of each corporation has authorized the execution of this contract by their respective presidents or vice-presidents and the placing of the corporate seal of each corporation thereon, duly attested by the secretary thereof.

(Signed) DETROIT CITIZENS' STREET RAILWAY COMPANY,
By TOM L. JOHNSON, *President, and*
[SEAL.] A. E. PETERS, *Secretary.*
THE DETROIT RAILWAY,
By H. A. EVERETT,
Vice-President, and
—— ——, *Secretary.*

EXHIBIT "50."

In re Exchange Usage of Griswold and Woodbridge Street Track.

This agreement, made and entered into this twenty-fourth day of May, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company, and the Detroit railway, hereinafter called the Detroit Company—

Witnesseth:

727 That, whereas, the Citizens' Company owns and operates a single track street railway along Griswold street from Jefferson avenue to Atwater street, and the Detroit Company is about to construct a single-track railway on Woodbridge street, from Griswold street to Bates street, in the city of Detroit, and it is deemed advisable to provide for the joint use of said tracks by said companies, at the points named.

Now, therefore, each company is to construct its own track and provide the overhead construction over its own track, including poles, wires and electric appliances necessary to fully equip the same, the work to be completed within ninety (90) days from the date hereof. The track and appliances put in by each company are to be owned and maintained by the party so constructing the same, and after such tracks are constructed and equipped, either company may by suitable and proper connections and curves, connect its track with the track of the other at the points of intersection.

Before any connection is constructed or the material ordered for the same, to be put in by either company, between the tracks of the other company, a detail plan showing the kind of rail and construction of the switch pieces and crossings shall be submitted to

the other company and approved by it; and the company making such connection shall furnish all the material and labor, and pay all the expenses of construction, including the concrete foundations, paving, rails and other materials, and be at the whole cost and expense of the first construction of said connections complete, and all renewals, repairs and reconstructions thereof.

Said connections shall be so constructed with reference to insulation as not to interfere with the proper transmission of current on the line of the road crossed or connected with, and to that
728 end, among other things, the rails of the connecting company are to be insulated by placing thin sheets of mica between the fish-plates and the sides of the rail, and also at the ends of the rails.

The connecting company shall do the work at the most convenient time for the other company, so as to interfere as little as possible with the running of cars thereon, and the work shall be pushed as rapidly as possible, and shall not be entered upon until all the material is on the ground for the same.

If it is necessary during the construction of a connection, that cars shall be pushed over the connecting point, the connecting company shall furnish and pay the necessary men for that purpose, and provide a suitable way for getting teams and horses around the point of connection, and also put in cross-ties as soon as possible, in such a way as to allow the horse cars to be used thereon, until the paving is completed.

After the completion of such railway, each company shall have the right to operate cars thereon and use the same freely, without let or hindrance, between the points named. All cars operated on the railway on Griswold street above described shall be run southerly, and on Woodbridge street above described shall run easterly. Cars shall not be permitted to remain standing on either of said tracks at any time longer than is necessary to take on and let off passengers.

The curves at the corner of Woodbridge and Griswold and Bates and Woodbridge are to be considered as a part of track, and jointly used by both companies.

The term "connecting company" herein used, means the company which shall desire to connect or make connections with the existing tracks of the other.

This contract shall continue in force during the corporate existence of each of the parties.

729 It is agreed that in entering into this contract, neither company waives any of the claims which it has made in the suit now pending in the circuit court for the county of Wayne, in chancery, in which The Citizens' Company is complainant and the said Detroit Railway and The City of Detroit are defendants, and in which the bill of complaint was filed on the fourteenth day of December, 1894, being chancery file No. 15030.

In witness whereof, the board of directors of each corporation has authorized the execution of this contract by their respective presi-

dents or vice-presidents and the placing of the corporate seal of each corporation thereon, duly attested by the secretary thereof.

(Signed) DETROIT CITIZENS' STREET RAILWAY COMPANY,
By TOM L. JOHNSON, *President, and*
[SEAL.] E. A. PETERS, *Secretary.*
THE DETROIT RAILWAY,
By H. A. EVERETT, *Vice-President, and*
ALBERT PACK, *Secretary.*

EXHIBIT "51 A."

Exhibit "51 A" is a cut which can be examined in the original record.

EXHIBIT "51 B."

Memorandum of agreement between Citizens' Street Railway Company and the Detroit railway, made May 4th, 1895, is as follows:

Only one track shall be laid on Griswold and Rowland
730 streets, between Grand River avenue and State street. The Griswold Street track shall be a south track, and the Rowland Street track shall be a north track; and both tracks shall be used free and in common by both said companies.

The Citizens' Street Railway Company shall build said Griswold street track, and also all tracks on State street between Griswold and Rowland streets, and the Detroit railway shall build the said Rowland Street track, including connecting curves.

The Detroit railway shall have the free use of north track on State street between Griswold and Rowland streets, and curves north and south from State to Rowland street on condition it pays said Citizens' Company for making such changes in tracks and curves on State street as shall be made necessary for the accommodation of said Detroit railway.

The tracks on Griswold and Rowland streets aforesaid, between Grand River avenue and State street, shall be near the center of said streets, if so permitted by the board of public works. All poles and wires shall be owned by each company over its own tracks.

All legal rights of both companies are hereby reserved.

(Signed) THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
By TOM L. JOHNSON, *President.*
THE DETROIT RAILWAY,
By H. A. EVERETT, *Vice-President.*

731 EXHIBIT "52."

AUGUST 19TH, 1895.

(Acceptance.)

The Detroit railway, Chamber of Commerce, Detroit, Mich.

GENTLEMEN: Herewith I hand you this company's acceptance, of date August 14th, 1895, as filed August 15th, 1895, with the city clerk, or that portion of an ordinance relating to it, approved by the mayor August 13th, 1895, in the matter of certain tracks to be constructed and operated between Michigan and Trumbull avenues, on Porter and Abbott streets.

Yours truly, J. C. HUTCHINS,
Vice-President.

EXHIBIT "53."

An ordinance supplementary to an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors, and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain, and operate street railways on certain streets, avenues, and public places as may be hereinafter designated," approved December 4, 1894, and the amendments and supplements thereto, fixing and determining certain changes in the street railway routes, connections,
732 and loop lines heretofore established, and authorizing the Detroit railway to establish, construct, and operate street railways thereon.

It is hereby ordained by the people of the city of Detroit:

SECTION 1. Subject to all the provisions and requirements of an ordinance entitled "An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successor, and assigns, when organized into a corporation under chapter 95, Howell's Compilation of the Statutes of the State of Michigan, said corporation to be named the Detroit railway, the right to construct, maintain, and operate street railways on certain streets, avenues, and public places in the city of Detroit, and on such other streets, avenues, and public places as may be hereinafter designated," approved December 4, 1894, and the amendments and supplements thereto, consent, permission, and authority are hereby granted to said, the Detroit railway, its successors and assigns, to construct, maintain, use, and operate street railway tracks in, along, and through the following streets and avenues in the city of Detroit, and the same to keep, maintain, and use, and to operate railway cars thereon in the manner and subject to conditions herein contained, and to all the requirements and conditions set forth in said original ordinance, namely:

A. In lieu of the double track heretofore authorized on Porter, Eighth, Abbott, Second, Howard, and Cass streets, between Twenty-

fourth street and Lafayette avenue, a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street; thence by a single loop-line track, one track extending easterly on Porter street to Second street; thence sourtherly on Second
733 street to Lafayette avenue; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott; thence easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single-track loop line in, along, and upon said streets.

Provided, that the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance, it is hereby authorized to build and own a single track and the poles and wires to be built and erected in Abbott street, from Trumbull avenue to Michigan avenue; and the tracks and overhead construction on Abbott and Porter streets between Michigan and Trumbull avenue-, shall be operated jointly by the two companies without charge by either company to the other on said portions of Abbott and Porter streets. Failure on the part of said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said tracks and overhead construction, in which case the other company may build and own all the tracks and overhead construction on said portions of Porter and Abbott streets.

B. In lieu of the double tracks heretofore authorized on Macomb and Hastings streets, extending from Brush street to Catherine and Sherman streets, a single-track loop line shall be constructed, commencing at the intersection of Macomb and Brush streets, extending one track easterly on Macomb street to Russell street;
734 thence northerly on Russell street to Catherine street, connecting with the track heretofore authorized thereon; and the other line commencing at Macomb and Brush streets; thence northerly on Brush street to Clinton street; thence easterly on Clinton street to Hastings street; thence northerly on Hastings street to Sherman street, connecting with the track heretofore authorized thereon, thereby forming a single-track loop line in, along and upon the streets mentioned.

SEC. 2. The powers, privileges and rights conferred and obligations imposed by this ordinance shall be deemed a contract and continue to said grantees, their associates, successors and assigns, for the same period of thirty years as provided for in said original ordinance, approved December 4, 1894.

SEC. 3. This ordinance shall take effect when said grantees shall file with the city clerk a written acceptance thereof, and the bond and other obligations filed in connection with the original ordinance

shall be held as a further condition for the faithful performance of the terms of this ordinance.

Approved August 13, 1895.

WM. RICHERT,
Acting Mayor.

Attest:
CHARLES R. FORSTER.

The Detroit Citizens' Street Railway Company hereby accepts all that portion of an ordinance entitled "An ordinance supplementary to an ordinance entitled 'An ordinance granting to Greene Pack, Albert Pack, Henry A. Everett, their associates, successors and assigns, when organized into a corporation under chapter 95 of Howell's Compilation of the Statutes of the State of Michigan, said
735 corporation to be named the Detroit railway, the right to construct, maintain and operate railways on certain streets, avenues and public places in the city of Detroit, and on such other streets, avenues and public places as may be hereinafter designated,' approved December 4th, 1894, and the amendments and supplements thereto, fixing and determining certain changes in the street-railway routes, connections and loop lines, heretofore established, and authorizing the Detroit railway to establish, construct and operate street railways thereon," approved August 13th, 1895, embraced in paragraph A, to wit:

"A. In lieu of the double track heretofore authorized on Porter, Eighth, Abbott, Second, Howard and Cass streets, between Twenty-fourth street and Lafayette avenue, a loop line shall be constructed commencing at the intersection of Twenty-fourth and Porter streets, connecting with the double track from the west on Porter street; thence by a single loop-line track, one track extending easterly on Porter street to Second street; thence southerly on Second street to Lafayette avenue; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized thereon. The accompanying loop shall be constructed, commencing at the intersection of Porter and Twenty-fourth streets; thence southerly on Twenty-fourth street to Howard; thence easterly on Howard street to Twelfth street; thence northerly on Twelfth street to Abbott; thence easterly on Abbott street to Fourth street; thence southerly on Fourth street to Lafayette; thence easterly on Lafayette avenue, connecting with the double track heretofore authorized on Lafayette avenue, thereby forming a single-track loop line in, along and upon said streets.

Provided, that the Detroit Citizens' Street Railway Company, if it shall so elect within ten days from the passage of this ordinance,
it is hereby authorized to build and own a single track and
736 the poles and wires to be built and erected in Abbott street, from Trumbull avenue to Michigan avenue and the tracks and overhead construction on Abbott and Porter streets, between Michigan and Trumbull avenues, shall be operated jointly by the two companies without charge by either company to the other on said portion of Abbott and Porter streets. Failure on the part of

said company to exercise this option within ten days, and complete said tracks in sixty days, shall operate as a forfeiture of its right to own and use any part of the said tracks and overhead construction, in which case the other company may build and own all the tracks and overhead construction on said portions of Porter and Abbott streets," it being the intention of the undersigned to accept such ordinance, in so far as the same relates to it, the Detroit Citizens' Street Railway Company, a copy of said ordinance being hereto attached marked "Exhibit 1" and made a part hereto.

Dated August 14th, 1895.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,

[SEAL.] By J. C. HUTCHINS, *Vice-President.*

Attest:

A. E. PETERS, *Secretary.*

EXHIBIT "54."

This agreement, made and entered into this 24th day of September, A. D. 1895, between the Detroit Citizens' Street Railway Company, hereinafter called the Citizens' Company, party of the first part, and the Detroit railway, hereinafter called the Detroit Company, party of the second part,

Witnesseth:

737 Whereas, the Citizens' Company owns and operates a line of double-track street railway on Michigan avenue, from Porter street to the east side of Griswold street, and has the right to the joint use with the Detroit Company of a part of the line of street railway on Porter street, and also on Abbott street, and owns a certain part of the track on Porter street, and also on Abbott street; and

Whereas, the Detroit Company has been granted permission and authority to construct, maintain and operate lines of street railway on Lafayette avenue from Fourth street to Griswold street, to connect with a third track on Michigan avenue, east of Griswold street; also on Second street, between Porter street and Lafayette avenue, and on Fourth street, between Abbott street and Lafayette avenue, and

Whereas, many of the property-owners on Lafayette avenue object to the line of street railway on said avenue, and the Detroit Company is willing to forego the exercise of its privileges in relation thereto, provided no company shall be hereafter at any time authorized to construct a street railway on Lafayette avenue during the term of the Detroit Company's franchises, and further, that it can secure the right to operate its cars on Porter street from Second street to Michigan avenue, and on Abbott street from Fourth street to Michigan avenue, and on Michigan avenue from Porter street to the west line of Griswold street, and also securing the right to connect its lines on Shelby street and Rowland street with the tracks on Michigan avenue, according to a sketch hereto attached and made a

part of this contract, and the right to make the necessary connections across Griswold street to its third track on Michigan avenue, east of Griswold street, which third track the Detroit Company claims the right to construct, and the Citizens' Company denies the right of said Detroit Company to construct.

738 Now, therefore, the said Citizens' Company hereby consents, under the following conditions, to the joint use by the Detroit Company of the north track on Michigan avenue from Porter street to the west line of Griswold street, and the south track on said avenue from Abbott street to the west line of Griswold street, and on Abbott street, from Fourth street to Michigan avenue, and on Porter street from Second street to Michigan avenue, including the overhead wires on that portion of Michigan avenue aforesaid, and including also the special work of overhead wires at the intersection of Porter street and Michigan avenue, and Abbott street and Michigan avenue, and the overhead wires on Abbott street from Fourth street to Michigan avenue, and that said Detroit Company may run and operate its cars thereon.

Said Citizens' Company also consents that the Detroit Company may make connections by suitable curves (as shown by annexed plan) between said tracks on Michigan avenue and the Detroit Company's tracks on Rowland and Shelby streets, and run and operate cars on said curves and connections.

Said Citizens' Company also consents that the Detroit Company may, at its own expense, put in any special work necessary to connect the tracks on Michigan avenue on the west side of Griswold street, across Griswold street, with a third track, which the Detroit Company claims the right to build on Michigan avenue, east from Griswold street (and which right is denied by said Citizens' Company), and when such special work shall be put in, to run and operate its cars thereon.

Neither company is to permit a car to remain standing on any of the tracks particularly mentioned herein, except long enough to take on or let off passengers. All cars are to be operated in

739 the same direction they are now being run on the Michigan Avenue tracks, and to run westerly on Porter street and easterly on Abbott street.

The electrical currents on the portions of the streets above mentioned shall be furnished and paid for under the directions of the agreement between the parties hereto dated the 24th day of May, 1895, which agreement relates to electrical current, and which, so far as the same may be applicable, is hereby made a part hereof. Each party is to pay one-half the cost of maintaining and renewing of all of the said jointly used tracks, and the pavements, foundations ties, poles, wires and appurtenances in a first-class condition. Whenever in the course of such repairs or renewals old material in the track or electrical appliances shall be removed, the proceeds of the same shall go as a joint credit to the parties hereto. Each party shall pay one-half the expense of cleaning tracks from snow and other obstructions. The special work to be constructed at the intersection of Rowland street and Michigan avenue as per the attached

sketch is to be constructed under the terms of the crossing contract between the parties hereto, dated June 1st, 1895, and in said contract designated as class 5; all the expense of constructing and maintaining the same is to be paid by the Detroit Company.

This contract shall continue during the corporate existence of either company.

In consideration of the foregoing rights, the Detroit Company hereby agrees to pay to the Citizens' Company the sum of eight thousand dollars in cash, which sum shall be paid before the Detroit Company shall operate its cars over said tracks.

All the rights herein granted in Michigan avenue, Porter
740 and Abbott streets are to cease if the Detroit Company shall hereafter construct tracks on Lafayette avenue, either under existing or future grants, and upon the repayment by the Citizens' Company to the Detroit Company of the said sum of eight thousand dollars, without interest.

It is agreed that in entering into this contract neither of the said companies waives any of the claims which it has made in the two suits now pending in the circuit court for the county of Wayne, in chancery, in one of which The Citizens' Company is complainant, and The Detroit Company and The City of Detroit are defendants, and in which the bill of complaint was filed on the 14th day of December, 1894, being chancery file No. 15030, and in the other of which The Citizens' Company is complainant, and The Detroit Company is defendant, and in which the bill of complaint was filed on the 6th day of June, 1895, being chancery file No. 15552.

This contract is not to become operative between the parties until an ordinance shall be adopted by the municipal authorities of the city of Detroit and approved and accepted by both companies, granting to the Detroit Company permission to run its cars under the terms of this contract, in manner aforesaid, and the municipal authorities shall agree with said Detroit Company that said company shall not construct its tracks on Lafayette avenue under its present ordinance until the common council shall declare that public necessity requires it, and shall further agree not to confer the right to construct a line or lines of street railway upon said Lafayette avenue during the term of the present franchises of the Detroit Company on said avenue upon any other company.

In witness whereof the boards of directors of each corporation has authorized the execution of this contract by the presidents or
741 vice-presidents of each, and the placing of the corporate seal of each corporation hereon, duly attested by its secretary.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
[SEAL.] By J. C. HUTCHINS, *Vice-President.*

Attest:
A. E. PETERS, *Secretary.*

THE DETROIT RAILWAY,
By H. A. EVERETT, *Vice-President,*
[SEAL.] By FORD STARRING, *Assistant Secretary.*

EXHIBIT "54 B."

Exhibit "54 B" is a cut, which can be examined in the original record.

EXHIBIT "55 B."

Articles of Association of the Detroit Railway.

We, the undersigned, Greene Pack, Albert Pack, Henry A. Everett, Charles L. Pack and Charles W. Wason, desiring to become incorporated under the provisions of chapter ninety-five of Howell's Annotated Statutes of the State of Michigan, being act numbered thirty-five of the Public Acts of 1867, entitled "An act to provide for the formation of street railway companies," and the various acts amendatory thereof and supplementary thereto, do hereby make, execute and adopt the following articles of association, to wit:

742

ARTICLE I.

The name by which this corporation shall be known in the law is the Detroit railway.

ARTICLE II.

The purpose for which this corporation is formed is to acquire, own, maintain, operate and use street railways in, upon and through the public streets, highways and public places in and about the city of Detroit and the adjacent counties, townships and villages.

ARTICLE III.

The amount of capital stock of this corporation is hereby fixed at the sum of one million ($1,000,000.00) dollars, divided into ten thousand (10,000) shares of one hundred ($100.00) dollars each.

ARTICLE IV.

The amount of the capital stock actually subscribed for at the date hereof is the sum of five hundred thousand ($500,000.00) dollars, of which one hundred thousand ($100,000.00) dollars has actually been paid in to the directors herein named.

ARTICLE V.

The city in which the offices for the transaction of the business of this corporation shall be located and where its business is to be carried on is the city of Detroit, in the county of Wayne, State of Michigan.

ARTICLE VI.

The term of the existence of this corporation is hereby fixed at thirty years from the date hereof.

743 ARTICLE VII.

There shall be five directors constituting the board of directors of this corporation, and the names of those who shall be directors for the first year of said corporation are hereby declared to be: Greene Pack, Albert Pack, Henry A. Everett, Charles L. Pack and Charles W. Wason.

ARTICLE VIII.

The names of the stockholders of this corporation and their respective residences and the number of shares held by each are as follows, to wit:

Greene Pack, of Oscoda, Michigan, twelve hundred and fifty shares.

Albert Pack, of Detroit, Michigan, eleven hundred and twenty-five shares.

Henry A. Everett, of Cleveland, Ohio, two thousand shares.

Charles L. Pack, of Cleveland, Ohio, one hundred and twenty-five shares.

Charles W. Wason, Cleveland, Ohio, five hundred shares.

In witness whereof we, the parties hereunto associated for the purpose of giving legal effect to these articles of incorporation, have hereunto set our hands and seals this tenth day of December, A. D. 1894, at the city of Detroit, county of Wayne, State of Michigan.

GREENE PACK. [SEAL.]
ALBERT PACK. [SEAL.]
HENRY A. EVERETT. [SEAL.]
CHARLES L. PACK. [SEAL.]
CHARLES W. WASON. [SEAL.]

744 STATE OF MICHIGAN, } ss:
County of Wayne, }

On this tenth day of December, A. D. 1894, before me, a notary public in and for said county, personally appeared Greene Pack, Albert Pack, Henry A. Everett, Charles L. Pack and Charles W. Wason, to me known to be the persons named in and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein named.

JOHN B. CORLISS,
Notary Public, Wayne County, Mich.

STATE OF MICHIGAN, } ss:
County of Wayne, }

Greene Pack, Albert Pack, Henry A. Everett, Charles L. Pack, and Charles W. Wason, being respectively duly sworn, do, each for himself, depose and say that they are the five directors named in the articles of association of the Detroit railway hereto annexed; that stock to the amount of five hundred thousand ($500,000.00) dollars has been subscribed thereto, and that one hundred thousand ($100,000.00) dollars of the capital stock thus subscribed for as afore-

said has been actually paid in cash to the undersigned directors named in said articles of incorporation.

GREENE PACK.
ALBERT PACK.
HENRY A. EVERETT.
CHARLES L. PACK.
CHARLES W. WASON.

Subscribed and sworn to before me at Detroit, county of Wayne, State of Michigan, this tenth day of December, A. D. 1894.

JOHN B. CORLISS,
Notary Public, Wayne County, Mich.

745 Testimony taken before D. Augustus Straker, circuit court commissioner, in the city of Detroit, on the 16th day of January, 1896, at 10 o'clock a. m., in a matter now pending and undetermined in the circuit court for the county of Wayne, in chancery, wherein The Detroit Citizens' Street Railway Company is complainant, and The Detroit Railway Company and The City of Detroit are respondents, on behalf of the complainant.

Appearances: Mr. Fred. A. Baker for the complainant; Mr. Herschel H. Hatch for the respondent.

FRANK E. SNOW, a witness produced on behalf of the complainant, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Examined by Mr. BAKER:

Q. You reside in Detroit?
A. Yes.
Q. Were you connected with the Highland Park Electric street railway?
A. Yes.
Q. One of its original promoters and officers?
A. Yes, sir. I was secretary and treasurer during its existence.
Q. Did you build that road?
A. Yes.
Q. Where did it run?
A. It started at the railroad crossing on Woodward avenue and ran out to the Highland Park hotel, about three miles and a half.
Q. A part of that railway was within the city limits?
A. 2,274 feet of it was within the city limits at that time; to Pallister avenue.

Q. What took place between the Highland Park Railway
746 Company and the Detroit city railway in regard to the Highland Park Company using that part of Woodward avenue which was within the city limits? Just state briefly what took place in regard to it?

Mr. HATCH: That is objected to as incompetent and immaterial.

A. We built the part outside of the city first, down to the city limits, expecting to make some arrangements with the city railway to build that piece connecting between us——

Mr. HATCH: That is, the city railway:

A. Yes; because I understood they had the right to build everything in the city, and we didn't undertake to do anything with that until we got the line pretty nearly completed to the city limits.

Q. Then what did you do?

A. I went to Mr. Hendrie about it and talked with him about it. He said they had the right to build that road, but he said they didn't care to build it themselves, they didn't care to cross the railroad tracks—there were three railroad tracks there; that they considered it dangerous. He said if they built the road they would have to run across the tracks. He said if we would make an agreement with them protecting their rights, they would allow us to get a franchise and build it.

Q. Did you ever enter into negotiations in regard to it; were any papers drawn?

A. Yes. We went ahead and obtained a franchise; some time in June or July, 1886, was the time it was granted, I think, a franchise from the city. In the meantime, I think, Mr. Hendrie went to Europe, but we went ahead and built the road, with the understanding that we should make an agreement with them to protect them.

Q. Was the agreement ever drawn up?

A. We got the road about all ready, about built, and I went down there to make an arrangement about the interchange of
747 tickets. I had the basis settled with Mr. Fry, who had charge of their tickets, and he said he could not consummate it until Mr. Miller gave his consent——

Q. (Interrupting.) Mr. Miller was the president?

A. Mr. Miller was the president. He went to Mr. Miller about it, and Mr. Miller drew up a contract for us to sign, embodying in the agreement——

Mr. HATCH: I object to what was contained in the agreement.

Q. Never mind that. Have you got that paper?

A. Yes, sir.

Q. Produce it, please.

Witness produces a paper which is marked Exhibit "Snow's Exhibit One."

Q. Is this the paper Mr. Miller drew?

A. Yes.

Q. Did you have a counter-proposition, any paper by itself? Did you draw up a paper?

A. I took this paper of Mr. Miller's and submitted it to the parties interested with me at that time, Mr. W. A. Jackson and John B. Corliss, they were interested with me in building the road, and we decided we would not sign the paper if we could get out of it. In the meantime we kept on building our road, and finally we

wanted to get this ticket business fixed up, and we drew up this agreement. Mr. Corliss drew this up.

Witness produces a paper, which is offered in evidence and marked "Snow's Exhibit 2." Complainant's counsel also offers in evidence "Snow's Exhibit One."

WITNESS continues: I would say in regard to "Snow's Exhibit One," that I saw Mr. Miller in regard to it, and he had made some changes here, he made them while I was there, I think.

Q. Those are in Mr. Miller's handwriting?

748 A. Yes, sir. He said he wanted those changes made, if we would make those and sign it it would be all right; they would allow us to place tickets on sale. We had an arrangement to sell tickets at a reduced price, at seven cents apiece. This is the agreement I had submitted to the parties interested with me, and we thought it was a little stiff, we didn't want to sign it on account of this agreement in it, that we would sell the road to them at a certain price at any time they wanted it.

Q. Then what did you do?

A. Then Mr. Corliss wrote this agreement, "Snow's Exhibit 2."

Q. What did you do with that?

A. Mr. Corliss drew it up and submitted it to them, and they laughed at it, paid no attention to it at all.

Q. What was finally done in regard to it?

A. We could not get the tickets put on sale. Mr. Miller would not agree to it, and I got Mr. Muir interested; he was one of the directors; he couldn't do anything with Mr. Miller. We waited until Mr. Hendrie got home, and he instructed Mr. Fry to put the tickets on sale. In the meantime we got the road built and commenced to run; didn't take but a couple of weeks to do it.

Q. Did you have anything to do with the building of the road known as the Mack Avenue line?

A. Yes, sir, I built it.

Q. What was done about any portion of that line that was within the city limits?

A. The road was first built from the water works up Cadillac boulevard and out the Mack road to Grosse Pointe, about eight miles. Afterwards we got a more direct connection. It was about three-quarters of a mile to come down Mack from Cadillac boulevard to Gratiot, but we built it to Baldwin avenue, and from Baldwin avenue to Gratiot. It was in the city limits, and the city railway notified us. I did get the franchise through the

749 common council, but it was vetoed. They passed the franchise 22 to 8, but Mr. Hendrie's influence with Pridgeon defeated it. They came to us then and stated they objected to anybody building a railway in the city except themselves. They said We will build it. They did build it, and we ran our cars over it for two years.

FRANK E. SNOW.

Subscribed and sworn to before me this 16th day of January, 1896.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

STRATHEARN HENDRIE, a witness produced on behalf of the complainant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Examined by Mr. BAKER:

Q. You were formerly connected with the active operation of the old Detroit city railway?

A. Yes.

Q. Do you remember the construction of what was known as the Dix Avenue electric line?

A. Yes.

Q. Did that line run into or connect with a line of the old city railway?

A. Yes.

Q. Which line?

A. The Baker Street line.

Q. Where did they meet?

A. At the corner of Twenty-fourth and Baker streets.

Q. The Detroit city line at that time on Baker street was a horse-car line?

A. Yes, sir.

Q. But could not be run in direct connection with the electric line for that reason?

750 A. No, sir.

Q. Will you state under what circumstances the Dix Avenue electric line was built, with reference to the exclusive privilege possessed by the Detroit city railway to build within the city limits?

A. Well, we didn't want it as a part of the Detroit city railway system. It was practically built by the Detroit city railway, and the Michigan Central had a little interest in it, through Harry Campbell and Harry Russel.

Q. They were interested in it for what reason?

A. Their repair shops were at the end of the Dix road.

Q. And the Dix Avenue line was built in part by them, but principally by your father and his associates?

A. Yes, sir.

Q. And your father and his friends at that time controlled the Detroit city railway?

A. Yes.

Q. And the Dix Avenue line?

A. Yes.

Q. In a separate corporation which they controlled?

A. Yes. In most cases their names did not appear, but they had the control, but some younger men were in it.

Q. They organized the company?

A. Yes.

Cross-examination.

Mr. HATCH:

Q. Was that operated as an electric line when first started?
A. Yes.
Q. From what point?
A. From the corner of Twenty-fourth street and Baker and north on Twenty-fourth street to Dix and west on Dix avenue to the Michigan Central tracks.
751 Q. How long was it operated as an electric line?
A. I think until the summer of 1889.
Q. When was it built?
A. It was built in 1886—1885 or 1886.
Q. It was operated, then, for three or four years?
A. Yes, sir. It was one of the first electric roads built.
Q. After 1889 it was converted into a horse railroad?
A. Yes.
Q. And operated in connection with the Baker Street line?
A. Yes. That was the first time the tracks were connected.
Q. You don't mean to say that the Michigan Central Railroad Company, in its corporate capacity, had any interest in the line?
A. No.
Q. You mean to say that certain men connected with the Michigan Central had an interest in it?
A. Yes. It was a matter of negotiation between the Michigan Central and the city railway. They wanted a line out there to their shops, and the city railway were willing to extend it, and they thought the Michigan Central should do something towards it.
Q. Did the Michigan Central, in its corporate capacity, pay anything?
A. The checks were not signed by the Michigan Central. They came through Harry Campbell and Harry Russel—not in its corporate capacity.
Q. But certain individuals connected with the Central railway became connected with others in the enterprise. That is all you mean to say.
A. Yes.
Q. When was the first electric line, aside from this one on Dix avenue, operated in Detroit?
752 A. It was either the Highland Park line or the Mack road. The Highland Park line was the first one in Detroit, anyway.
Q. When was that begun to be operated as an electric line?
A. I could not tell you.
Q. About what time?
A. Somewheres around about the same time, a little later, perhaps.
Q. About 1886?
A. I think so.
Q. And that was operated by a company independent of the Detroit city railway?
A. Yes.

Q. When did the Detroit city railway first begin the operation of street cars by electricity?

A. Under contract with the East Detroit and Grosse Pointe road in 1889. The East Detroit and Grosse Pointe road operated as an agent of the Detroit city railway on its Mack Road line.

Q. That began in 1889?

A. Yes.

Q. Do you know of the Highland Park street railway?

A. Yes, sir, by seeing it and by report.

Q. You knew there was such a railroad?

A. Yes, sir.

Q. That was on Woodward avenue, extending north from the railroad?

A. From the railroad crossing north.

Q. When first started, was it operated as a horse line or as an electric line?

A. I don't know. I think it was an electric line. I am not certain on that point. I don't think I ever rode on it. I have gone out to the end of our road and seen it. I think it was first started
753 in to develop the Fisher electrical works, in which Snow, Jackson and those people were interested.

Q. Was it ever a horse car line?

A. I don't think so.

Redirect examination.

Mr. BAKER:

Q. Did the Detroit city railway, in its corporate capacity, have anything to do with the Dix Avenue line?

A. It guaranteed the bonds of the Dix Avenue road.

Q. For how much?

A. $15,000.

Recross-examination.

Mr. HATCH:

Q. Were the officers of one company the same officers of the other?

A. No, sir; until they finally forced us into it. We tried to keep it out of the office as long as we could, but finally Mr. Muir came down one morning and dumped the books in the office.

Q. The stockholders in both companies were practically the same?

A. The principal stockholders were the same.

Q. Was your father, Mr. Hendrie, one of the principal stockholders in the Dix Avenue line?

A. Yes.

Q. And he was one of the principal stockholders in the Detroit city railway?

A. Yes, sir; and Mr. Muir, one of the principal stockholders of

the Detroit city railway, looked after it. We tried to keep it out of our office as much as we could.

754 Q. By "our office" you mean the office of the Detroit city railway?

A. Yes.

STRATHEARN HENDRIE.

Subscribed and sworn to before me this 16th day of January, 1896.

D. AUGUSTUS STRAKER,
Circuit Court Commissioner, Wayne County, Mich.

"SNOW'S EXHIBIT 2."

(Copy.)

This agreement, made this — day of September, A. D. 1886, by and between the Detroit city railway and the Highland Park Railway Company, both corporations under the laws of the State of Michigan, and under the ordinances of the city of Detroit, witnesseth, that, whereas, said corporations are severally operating street railways on Woodward avenue, said Detroit city railway, south of the railroad crossing, said Highland Park Railway Company north of said railroad crossing on said Woodward avenue; and, whereas, it is deemed mutually advantageous to arrange for the interchange of traffic over said railways.

Now, therefore, in consideration of the premises, it is mutually agreed that the following arrangement for the interchange of traffic over said railways shall govern during the next succeeding five years, unless otherwise mutually changed to wit:

Then follows in blue pencil:

"SNOW'S EXHIBIT 1."

(Copy.)

This agreement, made this — day of August, eighteen hundred and eighty-six, between the Detroit city railway and the Highland Park Railway Company, both corporations under the laws of the State of Michigan, and under the ordinances of the city of Detroit, witnesseth:

755 Under the city ordinance of November 24th, 1862, and the amendments thereto, the city railway is exclusively authorized to construct and operate a street railway on and through Woodward avenue, but said city railway has consented that the portion of said avenue which lies north of the crossings of the Grand Trunk and other steam railways may be used and occupied by the Highland Park Railway Company under the terms of the city ordinance approved July 12th, 1886, subject, however, to the following express conditions:

1st. That the Highland Park Railway Company shall never, either directly or indirectly, by themselves or their assigns, attempt

to extend their line or assert any right to any part of Woodward avenue south of the crossings aforesaid, or to any other streets in said city.

2d. The city railway may at any time hereafter acquire from the Highland Park Railway Company the entire franchise covered by the ordinance of July 12, 1886, and all rights thereunder, and all of the tracks and substructure constituting that portion of their railway within the city limits, upon the payment to said Highland Company of an amount not to exceed the actual cost of said tracks and substructure; and after payment or tender of the sum of $— an amount sufficient to cover such actual cost, and demand made for the transfer of such tracks and franchise, said city railway may at once enter — possession thereof and proceed to operate the same as part of their own Woodward Avenue line; and said Highland Park Railway Company shall, on such payment or tender and demand, cease to have any further rights under said ordinance or to maintain and operate said line. Except that in case the city railway company avails itself of its privilege under this section, the Highland Park Railway Company may obtain the use of said track so acquired between the present city limits and the railroad
756 crossing aforesaid, upon payment of a *pro rata* proportion of costs and maintenance of said track, provided such use shall not interfere with and shall be subject to the first right of the D. C. R. to occupy, own and control such tracks.

3rd. Until the city railway avails itself of the foregoing right, it is mutually agreed that the following arrangement for the interchange of traffic shall rule.

The Highland Park Railway Company is to charge three grades of fare; eight cents cash from any point on their line outside of the city limits to any point on the Woodward Avenue line of the Detroit city railway, including the M. C. R. R. depot and the D., G. H. & M. depot, as now arranged by the city railway company, or seven tickets for fifty cents, and the five-cent fare from any point within the city limits, including trip on city railway as above. The distance the Highland Park Railway Company run within the city limits and north of the Woodward Avenue Railroad crossing is 2,274 feet.

To simplify settlements, the Detroit city railway agrees to accept three and a half cents as their proportion on all tickets collected by them sold by the Highland Park Railway Company; and the Highland Park Railway Company to accept three and a half cents as their proportion on all tickets sold by the Detroit city railway beyond city limits, and one and a half cents within city limits of the Highland Park railway.

Settlements to be made weekly.

The Highland Park Railway Company agrees to get up all tickets, subject to the approval and acceptance of the Detroit city railway.

Tickets to consist of two coupons, one reading "Good on Highland Park railway," and the other reading, "Good on Detroit city railway;" colors to be mutually agreed upon hereafter, so as to facilitate the interchange both by passengers and the railway com-

panies. It is proposed to have two sets of tickets, one good
757 over the Detroit city railway and within city limits on the Highland Park railway, and the other the Detroit city railway and beyond the city limits of the Highland Park railway. Same tickets to be used going either north or south.

The Highland Park railway will furnish tickets to the Detroit city railway at such times and in such quantities as may be required. The Detroit city railway to sell to passengers, at the office only, at the rate of seven tickets for fifty cents beyond city limits and for five cents each within city limits.

The Detroit city railway further agrees to sell to their Jefferson and Woodward Avenue conductors and drivers, tickets at the rate of eight cents for through passengers and five cents for within city limits passengers. The Detroit city railway to pay the Highland Park Railway Company from time to time, only for such tickets as they shall have actually sold.

Example: A passenger boarding a Jefferson Avenue car at the M. C. R. R. depot who desires to go beyond city limits of the Highland Park railway will buy from conductor of said car a through ticket for eight cents. The conductor will tear off and retain the Detroit City Railway coupon and give the passenger the coupon good on Highland Park railway. At Woodward avenue, he will be treated as now, as a transfer to Woodward avenue. The same rule will apply on a five-cent fare within the city limits of the Highland Park railway.

758 STATE OF MICHIGAN:

In the Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY, Defendants.

Please take notice that the above-entitled cause will be brought on for hearing on pleadings and proofs and the demurrer of the city of Detroit at the opening of court on Monday, the 24th day of February, 1896, in court-room No. 5.

Yours, &c.,

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Dated Detroit, Feb. 13, 1896.

To the solicitors for said defendants.

759 STATE OF MICHIGAN:

Wayne Circuit Court.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants.

Opinion of the Court.

The bill of complaint in this case asks that the defendant, The Detroit Railway Company, be restrained and enjoined from executing or in any way carrying out an ordinance passed by the common council of the city of Detroit, on December 4th, 1894, or from constructing or commencing to construct any of the street railways specified in said ordinance. It is claimed on the part of the complainant that by article XIV., section 9, article 11, section 1, and article IV., section 23, of the constitution of 1850, that the sovereign power of the State over all public streets and highways (except State roads laid out under the swamp-land grants of the United States) is taken from the State legislature and distributes it among the townships, cities, and villages of the State, to be separately exercised by them as their particular interests, necessities and welfare may require, and that by virtue of the power so existing the city of Detroit did, by virtue of an ordinance approved November 24th, 1862, give to the Detroit city railway (to whose rights the complainant in this case has succeeded by purchase) the exclusive authority to construct and operate railways as therein provided, through certain streets named in said ordinance, and also through such other streets and avenues in said city
760 of Detroit as may from time to time be fixed and determined by vote of the common council of said city, and assented to in writing by said corporation, and further providing that if the corporation does not assent within thirty days after the passage of a resolution by the council, ordering the formation of new routes, then the common council may give the privilege to any other company to build such route. That the common council having, by the terms of the ordinance approved December 4th, 1894, authorized the defendant, The Detroit Railway, to construct a railway through certain streets of said city of Detroit (although not the streets named and specified in the ordinance of November 24th, 1862), that such action was unauthorized and against the rights of the complainant given by the ordinance of November 24th, 1862. It becomes necessary, therefore, to determine what power the city of Detroit has to grant to any corporation such rights as claimed to have been granted by the ordinance of November 24th, 1862, in streets not named in the ordinance, and not actually occupied by the complainant, as this is the only question that is involved in this case.

I am of the opinion that the constitution of the State does not give to the city of Detroit any such power, and that there can be no such power exercised by the municipality unless conferred by the

legislature. It does not follow, in my opinion, that if the streets, being public highways, are by the constitution put under the charge of the local authorities, that this power is not subject to legislative modification, restriction, and limitation, before it becomes operative. The rights claimed to have been granted to the complainant by the terms of the ordinance of November 24th, 1862, would, in my opinion, be of no force and effect unless the authority to grant the same had been conferred upon the common council by some act of the legislature. No such act has been shown, and it there-
761 fore follows that the ordinance in this respect is void and of no effect, and as the determination of this question does not make it necessary to decide the other questions raised, the injunction is therefore denied.

This matter was heard before the full bench and all the judges concur in the opinion.

R. E. FRAZER,
Circuit Judge.

STATE OF MICHIGAN, } ss:
County of Wayne, }

I, Henry M. Reynolds, register of the circuit court for the county of Wayne, in chancery, do hereby certify that the above and foregoing is a true and correct copy of opinion entered in the above-entitled cause by said court, as appears of record in my office. That I have compared the same with the original, and it is a true transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, at Detroit, this 4th day of March, A. D. 1896.

[SEAL.] HENRY M. REYNOLDS, *Register*,
By THOS. H. CHRISTIAN,
Deputy Register.

762 THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant,
vs.
THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants. } No. 15030.

Final Decree.

At a session of the circuit court for the county of Wayne, in chancery, held at the court-rooms in the city of Detroit, on the 2d day of March, 1896.

Present: Hon. George S. Hosmer, Hon. Robert E. Frazer, Hon. William L. Carpenter, Hon. Joseph W. Donovan, circuit judges.

This case having come to be heard upon the demurrer of the said defendant, The City of Detroit, to the bill of complaint of the said complainant and upon pleadings filed and proofs taken therein as to the defendant, The Detroit Railway, and the said pleadings and proofs having been read, and Messrs. Brennan, Donnelly & Van

De Mark, and Mr. F. A. Baker, of counsel for the complainant, and Mr. John J. Speed, solicitor and of counsel for the defendant, The City of Detroit, and Messrs. John B. Corliss and Charles Flowers, solicitors, and Messrs. Benton Hanchett and H. H. Hatch, of counsel for the defendant, The Detroit Railway, having been heard and the court having duly considered the said pleadings, proofs and arguments, it is in pursuance of the opinion filed in this case on the application for an injunction ordered, adjudged and decreed that the bill in this cause be and the same is hereby dismissed with costs in favor of the said defendants and against the complainant to be taxed and that the said defendants have execution therefor.

GEO. S. HOSMER,
Presiding Circuit Judge.

Countersigned.

THOS. H. CHRISTIAN,
Deputy County Clerk.

763 DETROIT CITIZENS' STREET RAILWAY COMPANY
vs.
CITY OF DETROIT and DETROIT RAILWAY.

Calendar Entries.

1894.
Dec. 4. Bill of complaint filed; subpœna issued.
" 27. Subpœna returned, served, & filed; also appearance of defendants entered.
1895.
Jan. 7. Argued and submitted.
" 7. Answer of defendant Detroit Railway filed.
" 14. Amendment of bill filed.
" 14. Opinion filed.
" 14. Order allowing amendment of bill to stand as paragraph 15½.
" 15. Demurrer of the city of Detroit filed.
" 15. Replication to answer of the Detroit railway filed.
" 24. Answer to amended bill of complaint filed.
Feb. 2. Replication filed.
" 15. Order to take proofs filed and entered.
May 13. Stipulation extending time to take testimony filed and ent'd.
Sep. 23. Stipulation extending time to take proofs filed & ent'd.
Nov. 14. Motion, notice, affidavit, and supplement- answer filed.
Nov. 18. Motion, notice, affidavit, and supplemental answer filed.
" 18. Order allowing Detroit railway to file supplemental answer and extending time ten days to complete proofs filed & ent'd.
Dec. 16. Order allowing complainant to amend its bill filed & ent'd.
" 16. Amendments of bill filed.
" 16. Notice filed.

1896.
Feb. 11. Report of testimony filed.
" 13. Affidavit to close testimony filed.
" 13. Order closing proofs filed and entered.
" 13. Order, notice, and proof service filed.
Mar. 4. Claim of appeal filed.
" 4. Proof of service of copy of affidavit to close testimony, etc., filed.
" 4. Final decree filed and entered.
" 4. Bond on appeal filed.

764 STATE OF MICHIGAN, } ss:
County of Wayne, }

The Circuit Court for the County of Wayne. In Chancery.

DETROIT CITIZENS' STREET RAILWAY COMPANY }
vs. }
DETROIT RAILWAY *et al.* }

I, Henry M. Reynolds, register of the circuit court for the county of Wayne, in chancery, do hereby certify that the above and foregoing are the original bill, process, answer, replication, and all other pleadings, processes, motions, notices, orders, and decrees which have been filed in said cause, together with the original minutes of all testimony in the cause taken before a commissioner, and also copies of all journal and calendar entries, and all other proceedings of record in the cause not embraced in the original papers hereinbefore mentioned; that such originals are genuine, and that such copies are true transcripts from the originals of record in this office and of the whole thereof.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the circuit court for the county of Wayne this 13th day of March, A. D. 1896.

HENRY M. REYNOLDS, *Register.*
By THOS. H. CHRISTIAN,
Deputy Register.

765 STATE OF MICHIGAN:

The Circuit Court for the County of Wayne. In Chancery.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant, *vs.* THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants. } No. 15030.

Claim of Appeal.

And the said complainant thinking itself aggrieved by the final decree rendered in this cause on the 2d day of March, 1896, claims

an appeal, and does hereby appeal therefrom to the supreme court of this State.

BRENNAN, DONNELLY & VAN DE MARK,
Solicitors for Complainant.

Detroit, March 3d, 1896.

Bond on Appeal.

Know all men by these presents, that The Detroit Citizens' Street Railway Company as principal and Jere. C. Hutchins and Herman A. B. Dupont as sureties, are held and firmly bound unto the City of Detroit and the Detroit Railway, their successors and
766 assigns, in the penal sum of five hundred dollars, for the payment of which sum they bind themselves, and their successors, or their executors or administrators, jointly and severally, firmly by these presents.

Sealed with our seals this 3d day of March, 1896.

Whereas the said Detroit Citizens' Street Railway Company has appealed to the supreme court of this State from the final decree rendered on the 2d day of March, 1896, by the circuit court for the county of Wayne, in chancery, in the case (file No. 15030), in which the said company is complainant, and the said Detroit Railway and The City of Detroit are defendants, now, therefore, the condition of the obligation is such that if the said appellant performs and satisfies the decree or final order of the supreme court in said cause and pays all costs that may be awarded to the appellees therein, then this obligation to be void, otherwise of full force and virtue.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
By JERE. C. HUTCHINS, *Vice-President.*

[Corporate Seal.]

JERE. C. HUTCHINS. [SEAL.]
H. A. B. DUPONT. [SEAL.]

COUNTY OF WAYNE:

I hereby fix the penalty of the above bond at five hundred dollars and approve of the sureties thereto.

Detroit, March 3d, 1896.

GEO. S. HOSMER,
Circuit Judge.

We consent to the approval of the above bond.

JOHN J. SPEED,
Solicitor for the City of Detroit.
CHARLES FLOWERS,
Solicitor for Detroit Railway.

767 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the second day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant and Appellant,
vs.
THE CITY OF DETROIT *et al.*, Defendants.

This cause, coming on to be heard, is argued by counsel in part.

768 At a session of the supreme court of the State of Michigan held at the supreme court room, in the capitol, in the city of Lansing, on the third day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant and Appellant,
vs.
THE CITY OF DETROIT *et al.*, Defendants.

The argument heretofore commenced herein is concluded and the cause submitted.

769 Supreme Court of Michigan.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY
vs.
THE CITY OF DETROIT and THE DETROIT RAILWAY.

Opinion.

Filed July 28, 1896.

MONTGOMERY, *J.*:

The bill in this case was filed to restrain the defendant The Detroit Railway from constructing and operating a street railway in certain streets in the city of Detroit, the complainants claiming to have a prior right to construct and operate a street railway in such streets under and by virtue of an ordinance of the city. The complainant is the successor to the Detroit city railway. By an ordinance approved November 24, 1862, the Detroit city railway was "exclusively authorized to construct and operate railways as herein provided, in and through" (certain named streets) "and through such other streets and avenues in said city as may from time to time be fixed and determined by a vote of the common council of said city of Detroit and assented to in writing by said corporation; * * * and provided the corporation does not assent in writing within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give

the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense."

By an ordinance passed in November, 1879, the rights
770 conferred and the obligations imposed by the ordinance of 1862 were continued until November 14, 1909.

Complainant's predecessor, the Detroit city railway, was organized under the train railway act, and at the date of the adoption of the first ordinance in 1862 section 34 of that act provided that "all companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them, provided that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

In 1867 this section was amended by adding another proviso, which reads as follows: "Provided, further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

The question first in importance is whether the common council of the city had the inherent power, or derived the power under this statute, to grant the privilege not only to build such lines as were specifically designated in the ordinance of 1862, but to couple with this grant the grant of the first right to build any other
771 lines which the city authorities might in the future elect to have constructed, on the same terms as were provided with reference to the lines specifically provided for in the ordinance of 1862.

It is apparent from the reading of the statute that there was no express and direct authority conferred in terms upon the common council to grant an exclusive privilege to occupy the streets of the city for street railway purposes. An attempt has been made to distinguish the right of election sought to be conferred by the ordinance from a grant of an exclusive privilege on the ground that the municipality reserves to itself the right to grant the privilege to other companies to construct street railways in case the first company shall elect not to build in designated streets; but while the ordinance does not, in terms, purport to be a direct grant of an exclusive use in all the streets of the city, it is a grant of an exclusive privilege which the company is given the option to avail itself of or not at its pleasure. The legislative control over the streets is suspended during a period of thirty years, except in cases where the company shall, upon investigation, determine that a line does not give sufficient promise of profit to justify it in making the

requisit- expenditure, when, on its refusal to build, the city regains so much of its legislative authority as enables it to provide for the construction of a particular line, but as to other streets and other lines its power is still suspended; nor would it be possible, under
772 the construction contended for by complainant, for the city to make other or better terms with another company prepared to build independent or competing lines. We consider that this is none the less a grant of an exclusive privilege because of the option reserved to the company to build or not, and that the rules of construction which obtain in construing such grants and in determining whether the power to make such grant exists should be applied. The general rule, established by the weight of authority, is that municipal corporations have no power to grant exclusive rights to street railway, gas, or water companies, except upon authority from the legislature given explicitly and clearly expressed, and that in construing charters and statutes conferring upon the municipality the right to provide for these conveniences the authority to grant exclusive privileges will not be implied from the use of general language. Booth on Street Railways, sec. 108; Grand Rapids E. L. & P. Co. *v.* Grand Rapids, etc., Co., 33 Fed. Rep., 659; Jackson *vs.* Interstate R'y Co., 24 Fed. Rep., 306; Saginaw Gas Light Co. *v.* Saginaw, 28 Fed. Rep., 529; Parkhurst *v.* City of Salem, 32 Pac. Rep, 304; Long *v.* Duluth, 51 N. W. Rep., 913; Cook on Stockholders, sec. 913.

It is conceded that the weight of authority establishes this rule, but it is contended that this is, after all, but a rule of construction and that the paramount rule of construction is that the intent of the legislature, when gathered from the whole terms of the enactment, should control. We recognize the force of this latter rule, except in a case where it crosses lines with another well-understood rule of construction; but courts are not at liberty to resort to this rule and to discard another rule of construction, for in ascertain-
ing the intent it must be assumed that the statute was
773 adopted in view of the recognized rule that nothing is to be taken by intendment in construing a legislative grant of power.

The principal contention of complainant's counsel is that the policy of our constitution, which favors local self-government, should have controlling effect in determining the legislative intent in this case, and that because of this policy the cases cited from other States to sustain the proposition that a municipality does not possess the power to grant an exclusive privilege, except the same be conferred in express terms, should not have controlling effect. To some extent counsel for complainant differ in the scope of their contention as to the effect of certain provisions of our constitution.

The contention, as it is made in the brief of one of complainant's counsel, is that under our constitution the sovereign power over all public streets and highways (except State roads laid out under swamp-land grants) is taken from the State legislature and distributed among the townships, cities, and villages of the State to

be separately exercised by them, and that therefore the local authorities in making street railway grants and in agreeing upon the terms and conditions thereof exercise an original power vested in them by the constitution of the State, and that they do not in any sense act as the agents of the State legislature by virtue of a mere delegation of authority. The provisions of the State constitution which are cited as establishing this policy are art. XIV, sec. 9; art XI, sec. 1; art. IV, sec. 23.

Art. XI, sec. 1, provides for the election of highway commissioners in townships and road districts, and can have no
774 bearing upon the question, except as it may tend to show the general policy of the people in dealing with the subject of highways.

Art. XIV, sec. 9, reads: "The State shall not be a party to or interested in any work of internal improvement nor engage in carrying on any such work, except in the expenditure of grants to the State of lands or other property."

And art. IV, sec. 23, provides: "The legislature shall not * * * vacate or alter any road laid out by the commissioners of highways or any street in any city or village or in any recorded town plat."

It is contended that these provisions take away the power from the legislature and transfer it to the local governments. In support of this contention we are cited to the cases of Hubbard *v.* Springwells, 23 Mich., 153; Davis *v.* Supervisors, 89 Mich., 295; People *v.* Hulbert, 24 Mich., 44; Park Commissioners *v.* Commissioner of Lands, 28 Mich., 228; Att'y Gen'l *v.* Common Council, 29 Mich., 108.

In Hubbard *v.* Township Board of Springwells the question arose as to the validity of an act of the legislature authorizing an appointment by the governor of commissioners to improve Fort street, in the township of Springwells, and to collect tolls. The township was required to issue bonds and submit to taxation for the purpose of paying for the improvement. It was held that this was a work of internal improvement, and as such could not be undertaken by State agencies, and it was further held that as commissioners and overseers of highways were constitutional officers their functions could not be wholly abolished nor could they be elected or appointed by other authority than the township. In this latter
775 holding the court followed People *vs.* Hurlbut; but in Hubbard *v.* Springwells the court by no means holds that the control of the streets by the local authorities is supreme; on the contrary, it was said that the power of the highway commissioners was subject to legislative modification.

In Davis *v.* Supervisors the court held, following Hubbard *v.* Springwells, that it was incompetent to withdraw from the local authorities provided by the constitution the functions of their offices and confer them upon a board appointed by a power removed from and not responsible to local authority.

The scope of the earlier decisions is clearly stated by Mr. Justice Cooley in Park Commissioners *v.* Common Council, 28 Mich., at

page 239. After stating that the opinion in People *v.* Hurlbut had been misapprehended, Justice Cooley said: "We intended in that case to concede most fully that the State must determine for each of its municipal corporations the powers it should exercise and the capacities it should possess, and that it must also decide what restrictions should be placed upon these, as well to prevent clashing of action and interest in the State as to protect individual corporators against injustice and oppression at the hands of the local majority; and what we said in that case we here repeat, that while it is a fundamental principle in this State recognized and perpetuated by express provisions of the constitution that the people of every hamlet, town, and city of the State are entitled to the benefits of local self-government, the constitution has not pointed out the precise extent of local powers and capacities, but has left them
776 to be determined in each case by the legislative authority of the State from considerations of general policy, as well as those which pertain to the local benefit and local desires; and in conferring those powers it is not to be disputed that the legislature may give extensive capacity to acquire and hold property for local purposes or it may confine authority within the narrow bounds, and what it thus confers it may enlarge, restrict, or take away at pleasure."

This is a clear exposition of plain provisions of the constitution.

Art. IV, sec. 38, reads: "The legislature may confer upon organized townships, incorporated cities and villages and upon boards of supervisors of the several counties such powers of a local legislative and administrative character as they may deem proper."

The limitation- upon this broad power to confer or withhold authority are that the legislature may not withhold authority from the local authorities and confer it upon an outside agency, and under the provisions of art. IV, sec. 23, it may not vacate or alter any road laid out by the commissioner or local authorities.

Since the adoption of the constitution many acts have been passed relating to the control of streets and imposing duties upon local authorities, and in special charters, as well as in the general act for incorporation of cities, it has been deemed essential to confer and define the extent of the control over streets reposed in municipal authorities.

This court, in the case of Taylor *v.* Bay City Street R'y Co., 80 Mich., 77. Mr. Justice Grant, speaking for the court, said: "Municipal corporations derive their sole source of power from legis-
777 lative enactments." See, also, Saginaw Gas Light Co. *v.* Saginaw, 28 Fed. Rep., 529; Grand Rapids E. L. & P. Co. *v.* Grand Rapids, etc., Co. 33 Fed. Rep., 659; Detroit *v.* Citizens' St. R'y Co., 12 C. C. A., 305; Detroit *v.* Blakeby, 21 Mich., 84.

The power of a municipality to grant an easement in the street to a street railway company is not inherent, but is derived from the legislature.

It is, however, strenuously urged upon us that in view of the general policy in favor of local self-government, which is evidenced by the provisions of the constitution quoted and the decisions of this

court, the grant to the municipality by the legislature should receive a construction more liberal than if it were a delegation of power which the legislature could itself exercise, it being urged in the same connection that the legislature could not grant an easement or right to use a particular street for street railway purposes. Without affirming or denying the latter proposition we do not think the precedent contention would be solved by a determination of that question. It is clear that whatever power the local authorities have to grant an easement in the street for street railway purposes is derived from the legislature. Whether the streets of a city be directly controlled by the legislature in such sense that a direct grant may be made or whether the trust be one which may be executed through certain local authorities only, the reasons for construing a grant of authority with strictness are equally forcible. Whether such a franchise be the subject of a grant by the State direct or by the local authorities the power over the streets is a trust, and the authority to grant an exclusive right ought not to be implied any the more because the legislature has not reserved
778 to itself or does not originally possess the power to grant an easement in a particular street.

The question whether such power is reserved to the legislature seems not to have been allowed to control the rule that the power to grant an exclusive franchise or right will not be inferred. In Parkhurst *v.* Salem, 32 Pac. Rep., 304, the c urt states the question as follows: "The precise question then is, had the city of Salem, under the grant of an exclusive power to permit, allow, and regulate the laying down of tracks for street cars upon such terms and conditions as it may prescribe, the power to grant for a term of years the exclusive right to occupy its streets with street railways." The court said: "It is true this power, so far as granted, is, by the charter, made exclusive—that is, the city alone has the power to permit, allow, and regulate the use of its streets for the purposes indicated; to this extent it is endowed with complete legislative sovereignty. That sovereignty has no limit so long as the city keeps within the powers granted." Yet, notwithstanding this, it was held that as the power to grant an exclusive privilege was not expressly conferred it was not to be implied.

Indeed, the argument in favor of the necessity that the power to grant exclusive privileges be lodged somewhere would apply with substantially the same force in case of a delegation of the power which the legislature may exercise directly, as in a case where the power is conferred upon the local authorities as the only means of granting an easement. Certainly the difference is only in degree, as during the recess of the legislature the power would in the
779 former case as in the latter be in the local authorities.

One very solid ground upon which the cases which hold that authority of a municipality to grant an exclusive privilege is not to be inferred in the absence of an express grant rests is that a franchise of that nature is in restraint of free competition. It does not detract from the force of these authorities that in some of the cases there has been stated a further reason that the legislature will

not be presumed to have delegated its own authority except to the extent that such delegation of power is clearly expressed. In State *v.* Gas Light Co., 18 Ohio St., 262, it was said:

"We have referred to these authorities as our justification for saying that when a franchise so far in restraint of trade and so pregnant with public mischief and private hardship is drawn in question and is claimed to be derived through a municipal ordinance or contract, the power of the municipal authorities to pass the ordinance or enter into the contract must be free from doubt. It must be found on the statute book in express terms or arise from the terms of the statute by implication so direct and necessary as to render it equally clear."

In Saginaw Gas Light Co. *v.* Saginaw, Judge Brown said: "Nothing is better settled than that statutes creating monopolies, granting franchises and charters of incorporation must be construed liberally in favor of the public and strictly against the grantee."

We think the act in question cannot be construed as conferring the power upon the common council to grant such a privilege as that which was attempted to be conferred by the ordinance of 1862. Certainly there is no express grant of the right to confer ex-
780 clusive privileges, nor do we think that there is any clear implication of any such power arising out of the terms of the act. There is a limitation upon the right of the company to construct a railway, which is that before doing so the company shall procure the consent of the municipal authorities under such regulations and upon such terms and conditions as said authorities may from time to time prescribe. Fairly construed, this language relates to the terms and conditions to be prescribed for the contemplated occupancy of streets, the use of which is presently contemplated by the parties to the contract, and the "terms and conditions" relate to such occupancy of such streets. A broader construction is contended for, and it is said that the power to make terms and conditions carries with it an implication of power to make all terms and conditions relating to the subject-matter necessary to effectuate the object of the legislation, and that it is to be assumed, and indeed that the evidence in the case fairly indicates, that the grant of this exclusive privilege was essential in order to induce the railway company to undertake the construction of a railway.

Of a similar contention it was said in the case of Long *v.* Duluth, 51 N. W. Rep., 915: "It may be said that the power to construct would be useless unless the privilege conferred may be made exclusive, for otherwise private corporations or persons would not engage in an undertaking involving the necessity for very large expenditures of capital in works which might be rendered unprofitable, if not valueless, by the subsequent action of the municipal or State government. The argument is not without force. The cases cited above and others show that it has often been advanced in
781 support of claims of exclusive privileges, but it has rarely, if ever, prevailed. It suggests considerations of policy which may influence the legislatures to grant or to authorize the granting

of exclusive privileges, but the principles in accordance with which legislative grants of this kind are to be construed seem to be so clearly established that generally not much weight can be given to such an argument in determining the effect of particular legislative action."

See also Grand Rapids E. L. & P. Co. *v.* Grand Rapids, etc., Co., 33 Fed. Rep., 671.

Assuming good faith on the part of the municipalities and private corporations contracting with them to be the rule, it would be difficult to imagine a case in which the attempted exercise of the right to grant an exclusive privilege could not be fortified by a well-grounded claim of necessity. We think an implication of power cannot be built up upon this claim.

Having reached the conclusion that the court below was right in holding that legislative authority to grant the privilege in question did not exist, it becomes unnecessary to discuss the numerous interesting collateral questions which have been raised and argued by counsel.

The decree of the court below will be affirmed with costs.

R. M. MONTGOMERY.
J. B. MOORE.
FRANK A. HOOKER.
C. B. GRANT.
CHAS. D. LONG.

782 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-eighth day of July, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable Charles D. Long, chief justice; Claudius B. Grant, Robert M. Montgomery, Frank A. Hooker, Joseph B. Moore, associate justices.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Complainant and Appellant,
vs. # 15458.
THE DETROIT RAILWAY and THE CITY OF DETROIT,
Defendants.

This cause having been brought to this court by appeal from the circuit court for the county of Wayne, in chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Wayne, in chancery, dismissing the bill of complaint, be, and the same is hereby, in all things affirmed. And it is further ordered, adjudged, and decreed that the defendants do recover of and from the complainant their costs, to be taxed.

783 To the Honorable Charles D. Long, chief justice of the supreme court of the State of Michigan:

Your petitioner, The Detroit Citizens' Street Railway Company, a corporation organized and existing under the laws of the State of Michigan, respectfully represents:

1. That it is the complainant in a cause commenced in the circuit court for the county of Wayne, in chancery, in this State, against The Detroit Railway, a corporation organized and existing under the laws of this State, and The City of Detroit, a municipal corporation, which said cause proceeded to a final decree in said circuit court in chancery in favor of the said defendants; that thereupon your petitioner took an appeal from said decree to this court, which is the final court of appeal in this State.

2. That the right claimed by said Detroit Citizens' Street Railway Company, as set forth in its bill of complaint filed in said cause, was in substance that it had, by certain grants made by the common council in the city of Detroit, the exclusive prior right to construct and operate all street railways in and through the streets, alleys, and public places of said city of Detroit, and that the said grants were in the nature of contract rights, which it was entitled to have and enjoy.

3. That in violation of its said contract rights and in impairment thereof the said City of Detroit, defendant, by and through its common council made a grant to the defendant The Detroit Railway of the right to construct and maintain and operate a street railway on certain streets, alleys, and public places in said city of Detroit, which said grant was in violation of the prior grant to your petitioner and was an impairment of the obligations thereof, said grant to said Detroit Railway Company being in the form of ordinances regularly adopted by the said common council.

4. That the grants and rights of your petitioner, as above recited, were entitled to be protected under and by virtue of the provision of the Constitution of the United States "that no State shall
784 pass any law impairing the obligations of contracts;" and, further, that the rights of your petitioner, so granted and held by it, were property rights within the meaning of the provision of the fourteenth amendment of the Constitution of the United States prohibiting any State from depriving any person of life, liberty, or property without due process of law, or denying to any person within its jurisdiction the equal protection of the law.

5. That the value of the property or sum in controversy between the parties in said suit exceeded the sum of ten thousand dollars.

6. That the appeal of your petitioner was duly heard in the supreme court of this State, and the decision and decree of said supreme court was against the rights set up by your petitioner, and said supreme court entered a decree in said cause confirming the decree of the circuit court for the county of Wayne, in chancery, therein.

Therefore your petitioner respectfully requests that you endorse hereon or on the writ of error hereto attached an order allowing

the issue of a writ of error to remove the record of said cause to the Supreme Court of the United States for review, in accordance with the provisions of the Revised Statutes of the United States, and that a citation may issue, under your signature, direct to the said defendants, as required by the rule.

And your petitioners ever pray.

THE DETROIT CITIZENS' STREET R'Y CO.,
By J. C. HUTCHINS,
Vice-President.

The writ of error prayed for in the foregoing petition is hereby duly allowed.

CHAS. D. LONG,
Chief Justice of the Supreme Court of Michigan.

Aug. 10, 1896.

784½ [Endorsed:] 15458. The supreme court. The Detroit Citizens' Street Railway Company, compl't & appellant, *vs.* The Detroit Railway and The City of Detroit, def'ts. Petition for writ of error & order allowing same. John C. Donnelly, attorney for petitioner. Office of clerk supreme court. Aug. 19, 1896. Received.

785 Supreme Court of the State of Michigan.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, a Corporation, Complainant and Appellant,
vs.
THE DETROIT RAILWAY, a Corporation, and THE CITY OF DETROIT, a Municipal Corporation, Defendants and Appellees.

In this cause application having been made to the Honorable Charles D. Long, chief justice of the supreme court of the State of Michigan, that being the highest court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court of the United States for review, in accordance with the Constitution and laws of the United States and of the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with two sureties.

CHAS. D. LONG,
Chief Justice of the State of Michigan.

August 10th, 1896.

785½ [Endorsed:] Supreme court. The Detroit Citizens' Street Railway Company, compl't & appellant, *vs.* The Detroit

Railway & City of Detroit, defendants. Order allowing writ of error. John C. Donnelly, attorney for pl't'ff in error. Office of clerk supreme court. Aug. 19, 1896. Received.

786 *Bond.*

Know all men by these presents that we, The Detroit Citizens' Street Railway Company, as principal, and Michael Brennan and John C. Donnelly, as sureties, of Detroit, Wayne county, Michigan, are held and firmly bound unto the Detroit Railway, a corporation organized under the laws of the State of Michigan, and the City of Detroit, in the full sum of one thousand dollars ($1,000), to be paid to the said Detroit Railway and the City of Detroit or their certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of August, A. D. 1896.

Whereas lately, at a session of the supreme court of the State of Michigan, in a suit pending in said court in which the said principal obligor was complainant and appellant and the said obligees were defendants and appellees, a decree was rendered against the said complainant dismissing its bill of complaint, and the said principal obligor, the Detroit Citizens' Street Railway Company, *have* obtained a writ of error and filed the same in the office of the clerk of said court to reverse the decree aforesaid, and the citation directed to the said Detroit Railway and the City of Detroit, citing and admonishing them to appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such that if the said Detroit Citizens' Street Railway Company shall prosecute its said writ of error to affect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE DETROIT CITIZENS' STREET R'Y CO.,
By J. C. HUTCHINS, *Vice-President.*
JOHN C. DONNELLY.
MICHAEL BRENNAN.

Signed, sealed, and delivered in the presence of—
THOS. M. DONNELLY.

787 STATE OF MICHIGAN, } ss:
County of Wayne, }

Michael Brennan and John C. Donnelly, sureties on the foregoing bond, being duly sworn, doth each for himself depose and say that he is a resident and freeholder of the State of Michigan and is possessed of property to the value of over one thousand dollars ($1,000)

over and above all incumbrances, indebtedness, and exemption from execution and sale and all liability and other similar bonds, and that he has signed the foregoing bond.

MICHAEL BRENNAN.
JOHN C. DONNELLY.

Subscribed and sworn to before me this 10th day of August, A. D. 1896.

BERNARD B. SELLING,
Notary Public, Wayne County, Michigan.

I hereby approve the foregoing bond.

CHAS. D. LONG,
Chief Justice Supreme Court of Michigan.

Endorsed: Filed Aug. 19, 1896. Chas. C. Hopkins, clerk supreme court.

788 The United States of America to the Detroit Railway and the City of Detroit:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the ninth day of September next, pursuant to a writ of error filed in the office of the clerk of the supreme court of Michigan, wherein The Detroit Citizens' Street Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why a decree rendered against the said plaintiff in error *as* in the supreme court of the State of Michigan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in their behalf.

Witness the Honorable Charles D. Long, chief justice of the supreme court of Michigan, this 10th day of August, A. D. 1896.

CHAS. D. LONG,
Chief Justice of the Supreme Court of the State of Michigan.

789 STATE OF MICHIGAN, *County of Wayne,* } ss:

William B. Hatch, being duly sworn, deposes and says that he is a clerk in the office of John C. Donnelly, attorney for The Detroit Citizens' Street Railway Company, the plaintiff in error mentioned in the foregoing citation; that for and in behalf of said plaintiff in error he duly served the foregoing citation by delivering accurate copies thereof to each of the defendants in error; that said service was made on F. A. Blades, Esq., controller of the city of Detroit, he being the proper officer of said city upon whom to make service thereof, and upon Charles Flowers, Esq., corporation counsel for the city of Detroit, he also being a proper officer upon whom to make service thereof and who is also one of the solicitors of record for the defendant The Detroit Railway, on the 21st day of August, A. D. 1896, and upon Albert Pack, Esq., president of the Detroit railway,

he being a proper officer of said company upon whom to make service thereof, on the 27th day of August, A. D. 1896, service of said citation as above recited on all the parties named being made in the city of Detroit, Wayne county, Michigan. Farther this deponent sayeth not.

WM. B. HATCH.

Subscribed and sworn to before me this 27th day of August, A. D. 1896.

[Seal of Alexander Munro, Notary Public, Wayne County, Mich.]

ALEXANDER MUNRO,
Notary Public in and for Wayne County, Michigan.

789½ [Endorsed:] Supreme court. The Detroit Citizens' Street Railway Co., pl'ff in error, *vs.* The Detroit Railway & The City of Detroit, def'ts in error. Citation. Filed Aug. 27, 1896. Chas. C. Hopkins, clerk. John C. Donnelly, attorney for pl'ff in error.

790 Supreme Court of the United States.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, a Corporation, etc., Plaintiff in Error,
vs.
THE DETROIT RAILWAY, a Corporation, and THE CITY OF DETROIT, a Municipal Corporation, Defendants in Error.

And now comes the plaintiff in error and makes and files the following assignments of error in the decree, finding, record, and proceedings of the supreme court of the State of Michigan in said cause:

1. The said supreme court erred in holding and finding that the city of Detroit had not the power to make the grant and contract set up in complainant's bill of complaint and upon which it based its claim for relief against the defendants, and the obligation of which it claimed was impaired by the grant to the defendant The Detroit Railway, within the meaning of the provision of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of any contract.

2. The said court erred in holding and deciding that the obligation of the grant and contract set up by the complainant in its bill of complaint *were* not impaired by the subsequent grant to the defendant The Detroit Railway by the defendant The City of Detroit, and in denying to the complainant the rights and protection claimed and asked for by it in its said bill of complaint, under the provision of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of a contract.

791 3. The said court erred in denying to it the rights claimed by it in its bill of complaint, under the fourteenth amendment of the Constitution of the United States, and in denying any relief to the complainant on that ground.

4. The said court erred in holding and deciding that complainant was not entitled to the remedy and relief prayed for in its bill of complaint, and in affirming the decree of the circuit court of the county of Wayne, in chancery, dismissing complainant's bill of complaint.

5. The said supreme court erred in not ordering and directing a reversal of the decree of the circuit court for the county of Wayne, in chancery, and directing the entry of a decree in favor of complainant as prayed for in its bill of complaint.

Therefore said plaintiff in error prays that the judgment and decree of the supreme court of Michigan may be reversed and a decree entered in favor of said plaintiff in error as prayed for in its bill of complaint.

JOHN C. DONNELLY,
Attorney for Plaintiff in Error.

792 [Endorsed:] 15458. Supreme court. The Detroit Citizens' Street Railway Company, pl'ff in error, *vs.* The Detroit Railway, The City of Detroit, def'ts in error. Assignment of errors. John C. Donnelly, attorney for pl'ff in error, Detroit, Mich. Office of clerk supreme court. Aug. 19, 1896. Received.

793

The Detroit Citizens' Street Railway Company, complainant and appellant, *vs.* The City of Detroit and The Detroit Railway, defendants.	Brennan, Donnelly & Van De Mark. Appeal from Wayne. In chancery.	John J. Speed, Charles Flowers.

Journal.	Date.	Proceedings.
	1896.	
	March 5	Notice of appeal and proof of service filed.
	" 12	Note of argument filed.
	" 14	Record on appeal filed.
	" "	Testimony filed.
	April 6	Stipulation for continuance filed.
	" "	Note of argument (June term) filed.
N 343	June 2	Argued in part.
" 344	" 3	Concluded and submitted.
" 427	July 28	Affirmed with costs.
	Aug. 19	Writ of error from Supreme Court U. S. received.
	" "	Bond filed.
	" 27	Citation filed.

(Here follows map marked p. 794.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

795 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court, before you or some of you, between The Detroit Citizens' Street Railway Company, a corporation, &c., complainant, and The Detroit Railway, a corporation, &c., and The City of Detroit, a municipal corporation, &c., defendants, a manifest error hath happened, to the great damage of the said The Detroit Citizens' Street Railway Company, complainant and appellant, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at *at* Washington on the* ninth day of September next, in the said Supreme Court of the United States, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 10th day of August, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first.

Seal of the Circuit Court, Eastern District of Michigan.

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—

CHAS. D. LONG,
Chief Justice Supreme Court, State of Michigan.

[Endorsed:] Supreme Court of the United States. The Detroit Citizens' Street Railway Company, a corporation, pl't'ff in error, *vs.* The Detroit Railway, a corporation, & The City of Detroit, a municipal corporation, def'ts in error. Writ of error to supreme court of Michigan. John C. Donnelly, attorney for pl't'ff in error, Detroit, Mich. Office of clerk supreme court. Aug. 19, 1896. Received.

* Not exceeding 30 days from the day of signing the citation.

The execution of the within writ appears by transcript of record hereto attached.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of Michigan.

Lansing, Mich., Sept. 7, 1896.

796 Supreme Court of the State of Michigan.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY, Complainant and Plaintiff in Error,

vs.

THE DETROIT RAILWAY and THE CITY OF DETROIT, Defendants in Error.

STATE OF MICHIGAN, *ss:*

In the Supreme Court.

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor signed by the judges of said court; that I have compared the same with the original, and it is a true copy and transcript therefrom and of the whole thereof; that attached thereto are the writ of error, with allowance endorsed thereon; the citation, with proof of service endorsed thereon; a copy of the bond to the adverse parties filed with the writ of error; the original map (Exhibit B) used on the hearing of said cause in said supreme court, and the assignment of errors by plaintiff in error in the Supreme Court of the United States; that at the time said writ of error was served upon me there was lodged with me for the adverse parties a copy of such writ.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Lansing, this seventh day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Seal of the Supreme Court of Michigan, Lansing.

CHAS. C. HOPKINS,
Clerk of the Supreme Court of the State of Mich.

Endorsed on cover: Case No. 16,386. Michigan supreme court. Term No., 236. The Detroit Citizens' Street Railway Company, plaintiff in error, *vs.* The Detroit Railway and The City of Detroit. Filed September 23d, 1896.

[redacted]

BRIEF FOR PLAINTIFF IN ERROR.

JOHN C. DONNELLY,
MICHAEL BRENNAN,
FRED A. BAKER,
Counsel for Plaintiff in Error.

DETROIT:
Record Printing Co., Free Press Bldg., 31 and 33 Lafayette Ave.
1911.

In the Supreme Court of the United States.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE CITY OF DETROIT, and THE DETROIT RAILWAY,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

HISTORY OF THE CASE.

This case originated in the Circuit Court for the County of Wayne, in Chancery, State of Michigan, by bill in equity filed by the plaintiff in error, to restrain the defendants from infringing upon the right of the plaintiff in error to construct and operate street railways in the streets, avenues and public places in the City of Detroit.

A demurrer to the bill was filed by the City of Detroit, and an answer thereto was filed by the Detroit Railway. The testimony was taken under the issue made by the Detroit Railway, and the cause came on to be heard upon the pleadings and proofs in the Wayne Circuit Court, in Chancery, which resulted in a decree of that Court dismissing the bill of plaintiff in error. An appeal was taken to the Supreme Court of the State where the case was heard. That Court affirmed the decision of the lower Court, and the case was then removed to this Court by writ of error.

The case grows out of a grant made by the City of Detroit to the Detroit Railway, of the right to construct, maintain and operate street railways in certain streets and avenues in Detroit, which plaintiff in error claims was in violation of the provision in its grant from the City of Detroit which was prior in point of time to that of the defendant in error, and by the terms of which it was granted the right to construct, maintain and operate street railways in certain named streets in the City of Detroit, and such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit, and the further claim by the plaintiff in error that the grant to the defendant in error impaired the obligation of the contract then existing between the plaintiff in error and the City of Detroit by which it claimed was granted the right to construct all new and additional street railway routes in said city.

The provision which plaintiff in error claims was violated and impaired by the subsequent grant to the defendant in error is found in section two of the ordinance (Rec., p. 12), which, after granting the right on certain streets therein named, proceeds, "and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the City of Detroit, and assented to in writing by said corporation organized as provided in Sec. 1 of this ordinance: And provided the corporation does not assent in writing within thirty days after the passage of the resolution of said Council ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid at their own cost and expense."

STATEMENT OF THE CASE.

The plaintiff in error is the successor of the Detroit City Railway, the original grantee and possessor of the rights claimed to be violated and impaired.

"The Detroit City Railway" was organized May 9th, 1863, for thirty years, under the train or tram railway act of 1855, as amended. 1 How. Stat., p. 900.

Sections 33 and 34 of that act are as follows:

"Sec. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State."

"Sec. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them; provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe: Provided, further, that after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

The Detroit City Railway was organized for the purpose of accepting, and it did accept, an ordinance of the Common Council of the City of Detroit, approved November 24th, 1862, and which ordinance, among other terms and conditions, contains the following:

"Sec. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson avenue through Brush or Beaubien streets to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street and through Fort street to the western limits of the city; and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the said City of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance. And provided, The corporation does not assent, in writing, within thirty days after the passage of said resolution of the Council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense: Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue; Provided, always, that said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the

grantees, or their assigns, under this ordinance, may elect."

The circumstances under which the parties agreed upon the terms and conditions contained in section 2 are important.

The following averment of the bill in this cause is not denied, and is in part admitted by the answer of the Detroit Railway (Record, pp. 4, 50).

"6. At the time the ordinance of November 24, 1862, was passed and accepted, the population of the City of Detroit was only about 50,000 people, and there were no street railways in the city. The provisions of said section 2 were inserted in the ordinance for the purpose of inducing the promoters and stockholders of the Detroit City Railway to invest sufficient capital to establish a street railway system in the City of Detroit."

The proofs disclose the following facts:

In 1862 (Rec., 122), the Common Council passed an ordinance, approved May 24th, 1862, granting to H. K. Sanger et al., when organized into a corporation under the tram railway law, the right to build, and operate street railways through certain streets and avenues of the city. Section 2 is as follows (Rec., 123):

"Sec. 2. The said grantees are, by the provisions of this ordinance, authorized to construct and operate railways as herein provided through Woodward, Jefferson and Michigan avenues and through Gratiot and Grand River streets, and from Jefferson avenue through Woodbridge street to Seventh street, up Seventh street to Fort street, and through Fort street to the western limits of the city, and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit, and assented to in writing by said corporation organized as provided in section 1 of this ordinance. And provided,

The corporation does not assent in writing within thirty days after the passage of such resolution of the Council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense; Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward avenue railways in such direction that said railways shall be continued down to and form each of them one continuous route to Jefferson avenue: Provided, always, that said railways down Gratiot street may be continued to Woodward avenue through State street, or through Randolph street and Monroe avenue and the Campus Martius, as the grantees or their assigns under this ordinance may elect."

It will be noticed that in this ordinance, the word "exclusive" was not used, but it does agree with the language of the ordinance of November 24th, 1862, with reference to certain specified streets named therein, and also in granting the right to build "through" such other streets and avenues in said city, as may from time to time be fixed and determined by vote of the Common Council of the City of Detroit, and assented to in writing by said corporation, and further in requiring the assent to be within thirty days. The section is exactly the same in substance as section 2 of the November ordinance, except that it does not use the word "exclusive." This ordinance was never accepted by the grantees, so that we find (Rec., 127), in August of that year the City Controller was directed by the Common Council to advertise for thirty days for proposals for building the street railways specified in the May ordinance, and he was directed to use the May ordinance with the names of the grantees stricken out,

and the time for building the roads extended eight months, as a specification on which proposals for building the roads would be received. The Controller inserted the advertisements directed by the Council, calling for sealed proposals for constructing the street railways specified, and on the 30th of September following (Rec., 127), reported to the Council that he had received only one proposal, and that from C. S. Bushnell, which was accompanied by a letter from E. N. Wilcox, Esq., attorney for Bushnell. Subsequently and on November 24th, 1862, the ordinance containing the section in question in this case was passed, granting to Bushnell and Wilcox, and their associates, consent, permission and authority to build street railways in the various streets named, and containing the exclusive prior option or right contained in section 2.

We have the right to presume that the changes made in the terms of the ordinance from what they were in the May ordinance were the result of deliberate negotiations between the parties, with a distinct understanding of their full import, and when we find the ordinance is changed in respect to the very matter involved in this suit, we very readily conclude that the changes made were the result of negotiations brought about by the public call for proposals, and with the understanding and good faith of both parties that the city had full power and authority to make the contract in the terms and with the conditions named in section 2, and that the favorable terms and conditions made by the amendments and changes were the controlling considerations which induced the grantees to accept the ordinance of November 24th, 1862, and to refuse to accept the ordinance of May 24, 1862. Before the ordinance was accepted it was twice amended. First by an ordinance approved December 27th, 1862 (Rec., 200),

and next by an ordinance approved January 12th, 1863 (Rec., 201).

That it was a work of considerable difficulty to bring about the investment of capital in the construction of street railways in this city, at the time the city called for proposals, will be seen from the testimony of Fred Carlisle (Rec., p. 103), from which it appears that he took an active part in endeavoring to interest parties in it, and it was only after considerable difficulty, and evidently after considerable modifications of the terms of the ordinance, that capital could be induced to engage in the enterprise.

THE FORT STREET AND GRAND RIVER LINES.

Among the lines specifically named and granted in section 2 of the ordinance of November 24, 1862, were Grand River street and Fort street. The Fort street line was to be completed within six months from March 31, 1863, and the Grand River street line to the easterly line of the Woodbridge Farm was to be completed within two years from the same date, and the balance thereof as the public necessity might require. See section 6 of the ordinance (Rec., 13).

By an ordinance approved August 19, 1863, the time to complete the Fort street line was extended to October 1, 1864. This extension was coupled with this provision: "And a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed" (Rec., 205, and 17).

The Fort street line was modified by an ordinance approved January 4, 1864 (Rec., 206-207, and 17-18).

The Detroit City Railway did not build the Fort street line and thereby forfeited its right to do so. The line was subsequently built by the Fort Street & Elmwood Avenue Railway, to whom a grant was made by an ordinance

passed over the Mayor's veto January 31, 1865 (Rec., 380-384).

It appears by the testimony of Mr. Emory Wendell that the Detroit City Railway consented to the construction of the Fort street line by another company (Rec., 99, 100, 102, 103).

The Detroit City Railway also forfeited its right to build the Grand River street line by not building it within the prescribed time. See section 18 of the ordinance of November 24, 1862 (Rec., 15).

This forfeiture was passed upon by the City Counselor and City Attorney in 1865 and 1866 (Rec., 210, 213).

After advertising for proposals a grant was finally made May 1, 1868, by the Common Council to the Grand River Street Railway Company (Rec., 387-391).

This grant is made subject to the rights of the Detroit City Railway (Rec., 391, Sec. 21).

This line was subsequently acquired by the Detroit Citizens' Street Railway Company, and for that reason section 2 of the ordinance of May 1, 1868, should not be overlooked. It reads:

"Sec. 2. The said grantees are hereby, by the provisions of this ordinance, authorized to construct and operate railways, as herein provided, through Woodward avenue from Jefferson avenue, from said last named avenue to its intersection with Grand River avenue, and from thence on and through said Grand River street to the point of intersection with the railway tracks of the Michigan Southern and Detroit, Monroe and Toledo Railway tracks. And also on and through any other street or streets running between the western terminus above specified and Woodward avenue, from said Grand River street to the Detroit river, as the Common Council shall by resolution designate; Provided, that there shall not be

at any time more than two parallel street railway tracks on Woodward avenue."

It fully appears, therefore, from this record that the Fort street and Grand River avenue lines were both named in the original grant to the Detroit City Railway; that that company was given the first right or option to build these lines, and by neglect to build them forfeited its right so to do.

THE CONGRESS AND BAKER LINE.

The Common Council of Detroit made a grant to the Detroit and Grand Trunk Junction Street Railway June 13th, 1873, without making a first offer of the line to the Detroit City Railway (Rec., 404-407). But it appears from the testimony of Frederick Carlisle that the original purpose of the road was to make a city connection for the steam railway known as the Canada Southern. As that company went into bankruptcy within six months the street railway company was a financial failure. It was operated at a loss for four years, was then sold to a syndicate and passed to the Detroit City Railway (Rec., 105, 107). It subsequently became known as the Congress and Baker street line.

It is evident that the Detroit City Railway had no desire to build this line; it was prematurely projected, and was, in fact, built for steam railway purposes, and not for an addition to the street railway system.

THE CASS AVENUE LINE.

The Central Market, Cass avenue and Third street line was projected in 1876. Mr. Sidney D. Miller, president of the Detroit City Railway, insisted upon the exclusive option of that company in a communication to the Common Council (Rec., 110).

The communication was reported upon by the judiciary committee and the City Counselor, and the right of the Detroit City Railway was recognized (Rec., 128-129). The report was adopted by the Common Council (Rec., 129), but disregarded in passing the Cass avenue ordinance, which was in the form of an amendment of a prior ordinance which had not been accepted or acted upon (Rec., 130). The Mayor thereupon interposed his veto on the ground that the ordinance passed was in conflict with the rights of the Detroit City Railway as reported upon by the judiciary committee and the City Counselor, and the veto was not overruled by the Common Council (Rec., 130-132).

Resolutions were then introduced into the Common Council offering the line to the Detroit City Railway for thirty days, but they do not appear to have been adopted (Rec., 131-132).

This record does not disclose any further facts in regard to the building of the Cass avenue line, except that a grant was made to the Central Market, Cass Avenue and Third Street Railway Company, and which subsequently passed to the Detroit City Railway (Rec., 330). It is fair to presume that the Cass avenue line was built in the interest of the Detroit City Railway. This much is certain, at all events, that the Detroit City Railway insisted and relied on its first right or option and that there was no serious dispute between the city and the company in regard thereto.

CONSOLIDATION OF 1879.

The ordinance of November 14, 1879, extending the grant of the Detroit City Railway to November 14, 1909, subjected the Congress and Baker street line and the Cass avenue line to the ordinance of November 24, 1862, as amended and extended. See section 3 (Rec., 20).

Sec. 6 (Rec., 21) is as follows:

"This ordinance shall take immediate effect when written acceptances of the terms thereof are filed in the office of the City Clerk of Detroit by the Detroit City Railway Company, the Detroit & Grand Trunk Junction Street Railway Company and the Central Market, Cass Avenue & Third Street Railway Company, or their successors; and from that date all ordinances or parts of ordinances in conflict with the provisions hereof shall stand repealed; and all ordinances and parts of ordinances not in conflict herewith are hereby affirmed and continued in force."

Separate acceptances by each company and a joint acceptance by all three companies were duly filed (Rec., 248-249).

The effect of the ordinance of November 14, 1879, was to extend the operation of Sec. 2 of the ordinance of November 24, 1862, for thirty years, and to leave the Fort street road and the Grand River road as the only independent lines in the city. Both of these lines had been specifically granted to the Detroit City Railway in the ordinance of November 24, 1862, and both had been forfeited by that company, as we have already shown.

FROM 1879 TO 1894.

The parties acted upon and carried out Sec. 2 of the ordinance of November 24, 1862, from 1879 to 1894 without deviation or modification in any way. The method of transacting the business, in passing and accepting subsequent ordinances, will be understood by a reference to acceptances numbered from 5 to 16 (Rec., 250-265).

FROM 1862 TO 1894.

It appears from the record that not a single mile of street railway has ever been constructed in the City of Detroit, from 1862 down to the making of the grant to the defendant in error, the Detroit Railway, unless the route

had first been granted to the Detroit City Railway, and by the failure to accept or construct, that company had forfeited its right to the same, or a grant was made to another company with the consent of the Detroit City Railway. Such consent was given in the case of the two first electric lines, the Highland Park line, and the Dix avenue line. See testimony of Frank E. Snow and Strathearn Hendrie (Rec., 456, 458).

DETROIT RAILWAY ORDINANCE OF DECEMBER 4, 1894.

By an ordinance approved December 4th, 1894, the Common Council granted to the Detroit Railway the right to construct street railways upon a large number of streets in Detroit without giving the Detroit Citizens' Street Railway Company as the successor of the old Detroit City Railway the first right or option thereon (Rec., 34-45).

This ordinance was granted and accepted in the face of the solemn objections and protests of the Detroit Citizens' Street Railway Company. See allegations and notices in 8th, 9th and 10th paragraphs of bill (Rec., 5-8).

The Detroit Citizens' Street Railway Company was organized August 24th, 1891, for thirty years, under the general act for the incorporation of street railway companies, approved March 5th, 1867.

I How. Stat., p. 908.

Sections 13, 14, 15, 18, 20 and 29 of that act are as follows:

"Sec. 13. Any street railway corporation organized under the provisions of this act may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be pre-

scribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along the streets or highways of any township adjacent to said city or village upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement and the acceptance by the company of the terms thereof shall be recorded by the township clerk in the records of his township."

"Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred."

"Sec. 15. Any street railway company may also purchase and acquire, either at public or private sale, whether judicial or otherwise, or may hire any street railway in any city, village or township owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain and complete such road, and may use and enjoy the rights, privileges and franchises of such company, the same, and upon the same terms as the company whose

road and franchises were so acquired might have done. Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway, fixtures, property and appurtenances, rights, privileges and franchises, may sell, lease, dispose of, pledge or mortgage whenever the corporation shall deem it expedient so to do."

"Sec. 18. Every street railway company is hereby required to lay the track of their road or railway in such way or mode and with such kind of rail, and to keep their railway and that part of the street and pavement within and adjacent to the track of such road or railway, in such condition and state of repair as shall be prescribed and provided in the consent, grant or agreement of the municipal authorities permitting the construction and location of such road or railway."

"Sec. 20. The rates of toll or fare which any street railway company may charge for the transportation of persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities."

"Sec. 29. All companies and corporations heretofore organized in this State for the purpose of building and operating street railways under the statutes then in force shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act."

Under this legislation the Detroit Citizens' Street Railway Company has acquired by purchase all of the street railway lines and all the contract rights under the ordi-

nance of November 24th, 1862, as amended and extended of the Detroit City Railway.

The bill in this case is filed by the Detroit Citizens' Street Railway Company to enjoin the City of Detroit and the Detroit Railway, as the parties to the grant of December 4th, 1894, from carrying out and executing the same and from constructing and operating the street railways proposed to be constructed thereunder.

The only question in the case is whether the provisions of said Section 2, giving to the Detroit City Railway the first right to construct new routes and extensions, are valid and binding and, as such, enforceable.

ASSIGNMENT OF ERRORS.

Plaintiff in error makes the following assignment of errors:

1. The said Supreme Court erred in holding and finding that the City of Detroit had not the power to make the grant and contract set up in complainant's bill of complaint and upon which it based a claim for relief against the defendants and the obligation of which it claimed was impaired by the grant to the defendant the Detroit Railway, within the meaning of the provision of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of any contract.

2. The said Court erred in holding and deciding that the obligation of the grant and contract set up by the complainant in its bill of complaint were not impaired by the subsequent grant to the defendant the Detroit Railway by the defendant the City of Detroit, and in denying to the complainant the rights and protection claimed and asked for by it in its said bill of complaint under the provision of the Constitution of the United States pro-

hibiting any State from passing any law impairing the obligation of a contract.

3. The said Court erred in denying to it the rights claimed by it in its bill of complaint under the fourteenth amendment of the Constitution of the United States and in denying any relief to the complainant on that ground.

4. The said Court erred in holding and deciding that complainant was not entitled to the remedy and relief prayed for in its bill of complaint and in affirming the decree of the Circuit Court of the County of Wayne, in Chancery, dismissing complainant's bill of complaint.

5. The said Supreme Court erred in not ordering and directing a reversal of the decree of the Circuit Court for the County of Wayne, in Chancery, and directing the entry of a decree in favor of complainant as prayed for in its bill of complaint.

The gist of the foregoing assignments may be stated to be that the grant to the plaintiff in error was a contract within the protection of the provision of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of any contract. That the subsequent grant by the City to the defendant in error the Detroit Railway was a violation and impairment of the obligation of that contract. That the contract in question was valid and binding and conferred property rights upon the plaintiff in error, and that the action of the defendants in error operated to deprive the plaintiff in error of its property without due process of law, and that the Supreme Court of the State of Michigan erred in not accepting the views of the plaintiff in error in that respect, and in dismissing the bill of complaint.

ARGUMENT.

I.

In the absence of constitutional provisions to the contrary, a State Legislature has power to confer on gas, water, street railway and similar corporations exclusive rights, privileges and franchises in the public streets and highways occupied or used by them.

This doctrine has been so thoroughly established by this Court that it is not open to controversy.

New Orleans Gas Light Co. vs. Louisiana, etc., Co., 115 U. S., 650.
New Orleans Water Works Co. vs. Rivers, Id., 674.
Louisville Gas Co. vs. Citizens' Gas Light Co., Id., 683.

In the first case cited the Louisiana Legislature had granted "the sole and exclusive privilege of making and supplying gas lights in the City of New Orleans by means of pipes or conduits laid in the streets to such persons or bodies corporate as might voluntarily choose to contract for it" for fifty years from April 1st, 1875. This sole and exclusive privilege was held by the New Orleans Gas Light Company, which was a consolidation of certain prior corporations.

In 1881 a corporation was organized under a general law providing for the formation of corporations for the construction and maintenance of works for supplying cities or towns with gas.

The Common Council of New Orleans passed an ordinance authorizing the new company to lay gas pipes in the streets of the city.

The old company filed a bill to enjoin the new company from making any such use of the streets, and the Supreme Court of the United States granted the relief prayed.

The opinion of the Court, as prepared by Mr. Justice Harlan, contains an exhaustive examination of the prior decisions of the Court, and sums the matter up as follows:

"If the State can, by contract, restrict the exercise of her power to construct and maintain highways, bridges and ferries by granting to a particular corporation the exclusive right to construct and operate a railroad within certain lines and between given points, or to maintain a bridge or operate a ferry over one of her navigable streams within designated limits; if she may restrict the exercise of the power of taxation by granting exemption from taxation to particular individuals and corporations, it is difficult to perceive upon what ground we can deny her authority when not forbidden by her own organic law—in consideration of money to be expended and important services to be rendered for the promotion of the public comfort, the public health or the public safety, to grant a franchise to be exercised exclusively by those who thus do for the public what the State might undertake to perform either herself or by subordinate municipal agencies."

In conclusion the learned justice called attention to the fact that the power to condemn private property to the public use was open to the State if it became advisable to terminate the grant before it expired.

He then said:

"In that way the plighted faith of the public will be kept with those who have made large investments upon the assurance of the State that the contract with them will be performed."

In the second case cited the New Orleans Water Works Company was given for fifty years from 1877 "the ex-

clusive privilege of supplying the City of New Orleans and its inhabitants with water from the Mississippi or any other stream or river by mains or conduits, and for erecting and constructing any necessary works or engines or machines for that purpose."

In 1882 the Common Council of New Orleans passed an ordinance authorizing Robert E. Rivers, or the lessee of the St. Charles Hotel, to lay a water pipe through the streets from the Mississippi River to the hotel to supply it with water.

The water company filed a bill against Rivers to enjoin him from laying a water pipe in the streets. The Supreme Court of the United States held that the company was entitled to the relief prayed. Referring to the situation of the defendant, the Court said:

"In common with all corporations and all other citizens of New Orleans, he must abide by the contract which the State made with the plaintiff, for such is the mandate of the Constitution of the United States."

In the third case cited the Legislature of Kentucky conferred on the Louisville Gas Company for twenty years "the exclusive privilege of erecting and establishing gas works in the City of Louisville" and "of vending coal gas lights and supplying the city and citizens with gas by means of public works."

Subsequently another gas company was incorporated, and with the consent of the city it was authorized to lay gas pipes in the streets. The City Council gave its consent. Held, that the contract with the old company was impaired by the charter of the new company, and that the old company was protected by the Constitution of the United States.

Before going any further in this discussion it will be advisable to have a clear understanding of the nature of the power exercised by a State Legislature in making a

grant to a quasi public corporation of the right to use the public highway and streets for the conduct of its corporate business.

A public street or highway is an easement, the title to which is vested in the public; that is, the whole or general public have a right to use a street or highway for travel and passage and purposes of a similar character. In States where there are no constitutional requirements to the contrary, the general public is represented by the Legislature, and that body has control and full supervision over the public interests in the highways of the State, and can modify, discontinue or surrender the public rights in whole or in part. The power of the Legislature in this respect is so great that it is equivalent to title in the State to the easement, the same being held by the State in trust for the public benefit; but the State has no title to the strips of land used as highways that is equivalent to private proprietorship, such as the State has in the sites on which the State Capitol and other State buildings are erected.

In the Lake Front cases of Illinois Central R. R. vs. People of Illinois, 146 U. S., 387, this Court had occasion to state the difference between a title held by the State as a proprietor and a title held in trust for public purposes.

The opinion of the Court by Mr. Justice Field contains the following:

"That the State holds the title to the lands under the navigable waters of Lake Michigan, within its limits, in the same manner that the State holds title to soils under tide water, by the common law we have already shown, and that title necessarily carries with it control over the waters above them whenever the lands are subjected to use. But it is a title different in character from that which the State holds in lands intended for sale. It is

different from the title which the United States holds in public lands which are open to pre-emption and sale. It is a title held in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them and have liberty of fishing therein freed from obstruction or interference of private parties."

An extract from the opinion of Mr. Justice Bradley in Stockton vs. Baltimore & New York R. R. Co., 32 Fed. Rep., 9, is approvingly quoted by Justice Field, and from which we quote the following:

"It is insisted that the property of the State, in lands under navigable waters, is private property, and comes strictly within the constitutional provision. It is significantly asked, can the United States take the State house at Trenton and the surrounding grounds belonging to the State and appropriate them to the purposes of a railroad depot or to any other use of the general government without compensation? We do not apprehend that the decision of the present case involves or requires a serious answer to this question. The cases are clearly not parallel. The character of the title or ownership by which the State holds the State house is quite different from that by which it holds the land under the navigable waters in and around its territory. The information rightly states that prior to the revolution the shore and lands under water of the navigable streams and waters of the province of New Jersey belonged to the king of Great Britain, as part of the jura regalia of the crown, and devolved to the State by right of conquest. The information does not state, however, what is equally true, that after the conquest the said lands were held by the State, as they were by the king, in trust for the public uses of navigation and fishery and the erection thereon of wharves, piers, lighthouses, beacons and other facilities of navigation and commerce. Being subject to this trust,

they are publici juris; in other words, they are held for the use of the people at large."

In People vs. Supervisors of Ingham Co., 20 Mich., 102, the case involved the validity of proceedings of the Board of Supervisors of Ingham County in discontinuing a part of the old State road running from Lansing to Marshall. The Legislature had passed an act legalizing the action and proceedings of the Board of Supervisors.

The Court, per Christiancy, J., said:

"The legislative power is everywhere recognized as the proper guardian of such public rights as the right to travel upon the highways, and having as the proper representative of the public full power over the whole subject of laying out, opening, altering and discontinuing highways. And this power they may, so far as they have not been restrained by the constitution, exercise directly without delegating it to any other tribunal.

"Our constitution has expressly taken from the Legislature the power to 'vacate or alter any road laid out by the Commissioners of Highways.' (Art. 4, Sec. 23.) But this is equivalent to an express affirmation of the power to vacate or alter a State road like that here in question, laid out by the Legislature itself. And there is a manifest propriety and consistency in placing the power to discontinue such roads in the same body which exercises the power to lay out."

It is here worthy of note that before the Constitution of 1850 was adopted the Legislature of Michigan had full control of our streets and highways, and the local consent to their occupation and use by plank road and other corporations was not constitutionally necessary.

Attorney General vs. Detroit & Erie R. R. Co., 2 Mich., 138.

Detroit & Howell P. R. Co. vs. Fisher, 4 Mich., 38.

In Plank Road Co. vs. Railway Co., 103 Mich., 585, where the grant was made before 1850, the Court, in an opinion by McGrath, C. J., said:

"By the terms of its charter, complainant was put into possession of said highway and was to retain such possession for the purpose of the construction and operation of its road. There is no doubt of the power of the Legislature in such case to make the privilege exclusive. (Wright vs. Nagle, 101 U. S., 791.)"

II.

The Michigan Constitution of 1850 takes the sovereign power of the State over all public streets and highways (except State roads laid out under the swamp land grants of the United States) from the State Legislature and distributes it among the townships, cities and villages of the State, to be separately exercised by them as their particular interests, necessities and welfare may require.

In many of the States constitutional provisions have been adopted prohibiting the Legislature from granting the right to construct and operate street railways without the consent of the local authorities; and in nearly all the States there are statutory provisions making the local assent necessary. These constitutional and statutory provisions are collated in Booth on Street Railways, Sec. 28, notes.

In Michigan we have no express constitutional provision referring to street railways, but we have other provisions relating to the general control of the highways, which accomplish the same result, not only as to street railway companies, but as to all other corporations which use the streets and highways.

As a result of the practical experience of the State in railroad building, the following sweeping and peremptory provision was inserted in the Constitution of 1850:

"The State shall not be a party to or interested in any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of land or other property."

Art. XIV., Sec. 9.

This left the streets and highways of the State to be laid out, constructed and improved by the local authorities; and certain officers for that purpose are provided for by the Constitution itself:

"There shall be elected annually on the first Monday of April in each organized township * * * one commissioner of highways * * * and one overseer of highways for each highway district."

Art. XI., Sec. 1.

Another section provides:

"The Legislature shall not * * * vacate or alter any road laid out by the Commissioners of Highways, or any street in any city or village, or in any recorded town plat."

Art. IV., Sec. 23.

There can be no question about the effect of these constitutional provisions in taking power from the Legislature and transferring it to the local governments.

In Hubbard vs. Township Board of Springwells, 25 Mich., 153, the Legislature had passed an act authorizing a Board of Commissioners, appointed by the governor, to improve Fort street west, in the Township of Springwells. These commissioners were authorized to collect tolls, and

the township was required to issue bonds and submit to taxation for the purposes of the improvement.

The Court, in an opinion by Campbell, J., held the act unconstitutional, and as it is a complete exposition of the position we take on this subject, we quote the following, beginning on p. 155:

"The work in question is one specifically ordered to be made by a law of the State, and the moneys are to be raised and expended by State agents, the expenses being charged, in part, upon a township, and in part upon a smaller district, but leaving these localities no option of receiving or rejecting the burden.

"By Article XIV., Section 9, of the State Constitution, it is declared: 'The State shall not be a party to or interested in any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of lands or other property.'

"That a macadamized road is a 'work of internal improvement' is manifest. The shortness of the road does not change its character. The restriction is not against great works, but against all works of that kind, and the case comes within the language and intent of the prohibition. And we can only repeat what was said in Ryerson vs. Utley, 16 Mich., R., 269, that 'The constitution does not permit the State either to contract a debt for a public improvement or to expend in its construction anything but the grants which it has received for the purpose; and any legislation which attempts any other expenditure must be directly within the constitutional inhibition, and therefore, void' (p. 275). The question whether the work is carried on by the State in no way depends on the sources from which the money is drawn to pay for it. It is a State work if directed, planned and executed by State agency, and while the fact that the money is charged on

a certain locality may make the proceeding objectionable on independent grounds, it does not alter its character.

"The ground set up in the replication also renders it necessary to consider the action of the commission in its bearing upon the local authorities, and to examine how far it can be considered as binding upon them by acquiescence or adoption.

"The street, being a public highway, was by law put under the charge of the local authorities. The constitution (Art. XI., Sec. 1) requires an election every year of a township Commissioner of Highways and of an overseer of highways for every highway district. Their powers were subject to legislative modification, but no legislation could abolish the offices or take away all their functions. The highways in each district must be, to some extent, at least, subject to an overseer elected by the people. As we held in the case of the Detroit Board of Public Works (24 Mich., 44), the regulation of the township affairs, legally concerning none but the people of the town, cannot be lawfully vested in any officers imposed upon the township from without. These commissioners, not appointed by, or responsible to, the township or its people, are empowered to assume exclusive charge of a town highway, turn it into a toll road and raise money and impose taxes in the township to complete and repair the work. From first to last, the town and all its elected officers are powerless and subject to the control of this foreign body; and the people have no voice in the management of one of their own public ways, which is converted into a perpetual turnpike, and put on the same footing with private turnpikes, except that its trustees are appointed by the State and paid by a tax imposed upon the town. The overseer of this highway district is excluded from all his functions, and so are all others who should have any voice in the matter. The result is that a purely

local work, public in its character, is taken charge of and conducted at local expense, and paid for by local bonds and taxes, without giving the local authorities any function to perform, except that of yielding implicit obedience to the orders and requisitions of a commission, in whose appointment and government the town and its people have had no part whatever.

"This is a very clear usurpation, and, so far as it goes, an absolute destruction of the local privileges. There is no principle which can justify such an interference, which would not equally justify the assumption by the State of the immediate control by its agencies of every highway in the commonwealth, and the imposition of local taxes for local purposes to be levied and expended by persons neither residents in, nor in any way connected with, or responsible to, the towns in which they levy their charges."

Davies vs. Board of Supervisors of Saginaw Co., 89 Mich., 295, is a case which concerned the validity of an act of the Legislature, by which it was proposed to take certain highways in the County of Saginaw out of the control of the townships, cities and villages and put them in charge of a Board of County Road Commissioners created by the act.

The Court, in an opinion by Mr. Justice McGrath, held the act unconstitutional upon four different grounds, the first and second of which are shown by the following extracts from the opinion:

"This act cannot be sustained.

"1. It seeks to divest certain local officers, recognized as such and provided for by the constitution, of the functions of their offices, and to confer those functions upon a board appointed by a power removed from that locality and not responsible to local authority.

"The functions of township officers who are continued by constitutional enactment are as clearly within the contemplation and protection of the constitution as are the officers themselves, and the Legislature has no more power to deprive those officers of their authority and confer that authority upon officers not of local selection than it has to abolish the offices. It is just as essential to local self-government that the functions of elective officers be preserved to such officers as that the right of election be protected; indeed, it is the local management of local concerns, by and through the medium of officers of their own selection, that is sought to be protected. Strip the officers of a municipality of their own functions, and you rob the municipality of its vitality." * * *

"2. The act undertakes to convert certain highways already laid out—presumably by township authority—into State roads, and to give to the Board of Supervisors authority to convert other roads into State roads.

"State roads are such only as have been laid out by State authority." * * *

"Section 23, of Article 4, of the Constitution expressly prohibits the discontinuance by the Legislature of highways laid out by township authorities. The right of the Legislature to vacate State or territorial roads is unquestioned. If highways may be converted into State roads by legislative declaration, and State roads may be discontinued at the will of the same body, then the constitutional provision may be easily avoided."

The Constitution of 1850 also contains the following provision:

"The Boards of Supervisors of each organized county may provide for laying out highways, constructing bridges and organizing townships under such restrictions and limitations as shall be prescribed by law."

The statutes have always confined this power of the Boards of Supervisors to State and territorial roads.

1 How. Stat., Secs. 497-500.

In People vs. Highway Commissioners of Nankin, 15 Mich., 347, the question arose whether the power of the supervisors affected that of Township Highway Commissioners.

Cooley, J., speaking for the Court, said:

"This section has never been construed by the Legislature as taking from the township authorities the control over roads which they before possessed, and all the statutes which have since been passed on the subject have provided for the continued exercise of that control. A careful examination of the provision will show that it is not one which executes itself, but that it contemplates action by the Legislature establishing restrictions and limitations before it becomes operative. Even then it is not in its terms exclusive, and there is nothing which would preclude the Legislature from conferring power over this subject on the Township Highway Commissioners even if they should also provide for the exercise of similar powers by the Board of Supervisors in specified cases, with suitable provisions to prevent conflict."

Whatever the Legislature may be able to do in that respect, this much is certain: It cannot exercise any power itself. The power in question must be exercised by either the Boards of Supervisors or by the township authorities, both of which are local bodies; and it is wholly immaterial which has been or may be given precedence over the other.

III.

The provisions of the Michigan Constitution of 1850, prohibiting the organization of corporations except under general laws, and limiting the life of corporations, with certain exceptions, to thirty years, also lead irresistibly to the conclusion that the power of the townships, villages and cities of the State to control the public streets and highways within their limits is an original power vested in them by the Constitution, and not a power delegated to them by statute.

The constitutional provisions are as follows:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed."

"No corporation, except for municipal purposes, or for the construction of railroads, plank roads or canals, shall be created for a longer time than thirty years."

Art. XV., Secs. 1 and 10.

It requires but little reflection to see that inasmuch as the Legislature alone can pass a general law, it cannot delegate to municipal corporations the power to create corporations or to grant corporate franchises.

Neither can the Legislature grant the use of particular streets to a corporation, or to a class of corporations.

Nor can the Legislature authorize municipal corporations to do, in its behalf and as its agents, what it cannot do itself.

And, therefore, if these constitutional provisions apply to municipal corporations as restrictions upon their authority, street railway and similar grants for the use of particular streets cannot be made at all, because they are not capable of being made by a general law.

The Constitution of California, like that of Michigan, provides that "corporations may be formed under general laws, but shall not be created by special act except for municipal purposes."

In San Francisco vs. Spring Valley Water Works, 48 Cal., 493, it appeared that the Legislature passed a general law under which water companies could be formed or organized. It then passed an act granting to "George H. Ensign and his associates and their assigns," the right to use the streets of San Francisco for the purpose of laying water pipes therein, but this act was not to take effect unless Ensign and his associates, within sixty days, "duly organized themselves in conformity with existing laws regulating corporations now in force in this State."

Ensign and his associates did organize themselves into a corporation under the name of the Spring Valley Water Works.

The Court, in an opinion by Crockett, J., held the Ensign act unconstitutional.

At p. 513 the Court says:

"But on the other, and the true construction of this constitutional provision, all private corporations must derive their powers from general laws, and not from special statutes. The general laws under which they were formed, and such others as shall afterwards be enacted, must alone define their rights and powers. On this theory all private corporations, formed for similar purposes, will stand upon the same footing, enjoy the same rights, and be subject to the same burdens, which cannot be increased or diminished except by general laws

applicable to all. In harmony with this theory, and accepting this as the true construction of the Constitution, the Legislature, at its first session, enacted general laws under which private corporations might be formed, and defining minutely their powers and duties. These laws have been modified from time to time, but have never omitted to prescribe the powers to be exercised and the duties to be performed by the corporation. Nothing short of some imperative rule of constitutional construction would justify us in holding, at this late day, that, though corporations must be 'formed' under general laws, it is nevertheless competent for the Legislature, by special grant, to confer upon a corporation once organized, any powers, however extraordinary. We think, on the contrary, that no corporate rights or powers can be conferred by a special grant, but must all be derived under general laws."

A motion for a rehearing was made, and another opinion was filed. At p. 529 is the following:

"But the State has no proprietary interest in the streets of a city, dedicated to public use. In its capacity as a sovereign, it may regulate the use, or abolish it altogether. (Polock vs. San Francisco Orphan Asylum, ante p. 490.) But, as a general rule, the fee is in the owners of the adjoining lands on each side, to the center of the street, and the State can only regulate and control the easement which the public has over the land. When the State grants to a private corporation an easement over the streets, not common to the public at large, it acts in its sovereign capacity and grants a franchise, which enters into and forms an essential element in the corporate powers of the corporation; which becomes entitled to the right not because the State has parted with any proprietary interest in the land, but because in its sovereign capacity, having the control of public highways, it has

granted to the corporation a franchise, entitling it to an easement over the streets not common to the general public. This is purely a grant of corporate power, and nothing more or less, and, as we have already seen, such rights cannot be conferred by special act."

Followed:

Waterloo Turnpike Co. vs. Cole, 51 Cal., 381.

The doctrine of the foregoing cases was subsequently applied by the Supreme Court of California to a street railway grant. The Legislature passed a general law authorizing the local authorities in all parts of the State "to grant to any person or corporation the right to lay down and maintain for a term not exceeding twenty-five years, an iron railway track or tracks, upon any streets or avenues or public highways in said cities or towns, and to run cars thereon," etc.

After this law was in force the Legislature passed an act authorizing the Omnibus Railroad Company, and North Beach and Mission Railroad Company, to lay street railways on certain designated portions of an avenue in San Francisco, and the local authorities made a conflicting grant to other parties.

In Omnibus Railway Company vs. Baldwin, 57 Cal., 160, the question presented was whether the special grant so made by the Legislature was constitutional.

The Court held the special act in conflict with the provision that corporations shall only be organized under general laws.

In Chicago City Railway Co. vs. The People, 73 Ill., 541, it appeared that the Illinois Legislature had incorporated a street railway company by special act, and the Common Council of the City of Chicago granted to it the use of a public street on condition that it should build and complete a railroad thereon within fifteen months.

The company did not comply with the conditions, but only built part of the railroad within the fifteen months.

A new constitution was then adopted, providing for the organization of all corporations under general laws, and prohibiting the State by local or special laws from "granting to any corporation, association or individual any special or exclusve privilege, immunity, or franchise whatever," and from "granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose."

After the adoption of these constitutional provisions the Common Council of the City of Chicago passed an ordinance extending for two years the time in which the company was required to complete the railroad.

Counsel insisted that this ordinance was a grant of special privileges or franchises, and that it was void as in conflict with the Constitution.

In disposing of this contention, the Court, among other things, said:

"Article IV., Section 22, of the Constitution of 1870, cited, is a limitation upon the power of the general assembly to grant any corporation, association or individual the right to lay down railroad tracks, or amend existing charters for that purpose; but by no construction can it be said to be a limitation upon a municipal corporation to designate certain streets and fix the conditions upon which a railway company, organized under a special charter, previously granted, or under a general law since the adoption of the Constitution, might lay its track. It is a misconception of the law to suppose the railway company derives its power to construct a railroad from any ordinance of the city. All of its authority is from the State, and is conferred by its charter. The city has delegated to it the power to say in what manner and upon what conditions the company may exercise the franchises

conferred by the State, but nothing more. The authority of the city in this regard is not affected by the provisions of the Constitution which inhibit the granting by the general assembly of any special or exclusive privilege, immunity or franchise."

The Constitution of Ohio provides that "the general assembly shall pass no special act conferring corporate power."

In Sims vs. Street Railroad Co., 37 Ohio St., 556, 570, it was argued that " if the Legislature cannot by special act confer corporate powers, it cannot vest in city councils the power by ordinance to do the same thing."

But the Court replied:

"The vice of this argument is the assumption that an ordinance granting permission for such an extension confers corporate powers. It only permits the exercise of such powers as are conferred by statute. If such an ordinance confers corporate powers, then also does a like ordinance under sections 1 and 2 of the act of 1866, which provides that no street railroad shall be constructed in any street without permission first being granted."

"Neither statute authorizes the city council to confer corporate power. They vest in the city the right to grant or refuse to street railroad corporations permission to construct or extend their tracks under the corporate power acquired by their certificate of incorporation."

These cases make it perfectly clear that street railway grants, as made by the local authorities in this State, cannot be considered as grants of corporate powers or franchises so as to be subject to the restrictions imposed by the Constitution on the Legislature, for if subject to these restrictions, they are a legal impossibility.

When the local authorities act as the agents of the Legislature of the State, they are necessarily bound by

the limitations imposed by the Constitution of the State on the Legislature.

This is strongly illustrated by a case in Alabama.

Under the Alabama Constitution of 1875 the Legislature retains its sovereign control of public highways, but it is made subject to the following limitations:

"That no ex post facto law, nor any law impairing the obligation of contracts, or making any irrevocable grants of special privileges or immunities shall be passed by the general assembly."

It has been held that this provision prevents the general assembly from authorizing a municipal corporation to make irrevocable street railway grants.

Birmingham, etc., Ry. Co. vs. Birmingham St. Ry. Co., 79 Ala., 465.

At p. 475 the Court says:

"The exclusive right of the appellee to the privilege claimed, in our opinion, cannot be maintained. The general assembly would itself have no power under the Constitution to make such a grant. A fortiori, a mere municipality would have no such power."

IV.

It is an incontrovertible proposition, therefore, that in Michigan the local authorities, in making street railway grants and agreeing upon the terms and conditions thereof, exercise an original power vested in them by the Constitution of the State, and that they do not in any sense act as the agents of the State Legislature in virtue of a mere delegation of authority; and all decisions, State

or Federal, proceeding upon a contrary theory are either inapplicable or erroneous.

When street railways were first proposed in the City of New York, there was no law in the State of New York for the incorporation of street railway companies, and if they could be incorporated at all it must have been under the general law for the incorporation of steam railways.

At that time and for many years afterwards, the Legislature of that State had supreme control of all public highways, and was the trustee of the public rights therein. The Legislature had never authorized the Common Council of the City of New York to make street railway grants; nor had it authorized the Common Council to confer the franchise to operate street railways and collect tolls or fares.

Under such circumstances, the Common Council of the City of New York granted to Jacob Sharp and certain other persons, and those who might from time to time be associated with them, authority and permission to construct and operate a street railway on Broadway, and to collect fares from persons riding thereon. The resolution or ordinance of the Common Council provided that Sharp and his associates should organize themselves into a joint stock association, and in that way maintain succession, or that they incorporate themselves under the general railroad act.

The joint stock association contemplated was the common law copartnership known by that name.

The validity of this action of the Common Council was passed upon by the New York Court of Appeals.

Davis vs. New York, 14 N. Y., 508.

Five of the seven judges held the resolution of the Common Council void.

Denio, Ch. J., held (1) that the proposed railway was not within the purposes of a public highway, but inconsistent with, and destructive of, the public right of passage; and (2) that even if the railroad would be wholly unobjectionable as an obstruction in, or interference with, the street, and would not impair in the slightest degree the adaptation of that thoroughfare for all the purposes for which it could ever have been used, yet the right of making the road and collecting fares and tolls thereon was a franchise which could only be granted by the State, and could not be granted by the City of New York unless the power was in terms, that is, expressly conferred by the city charter.

Comstock, J., in a separate opinion, held that the City of New York had a right, in the exercise of its authority over the streets, to provide for the laying of iron rails along Broadway for the passage of a particular kind of carriage drawn by horses, but he was of the opinion that the Common Council had no power to give Sharp and his associates the exclusive use of the road in perpetuity, and for that reason he considered the whole ordinance void.

The same resolutions or ordinance were again passed upon by the Court of Appeals and the former decision was followed.

Milhau vs. Sharp, 27 N. Y., 611.

In the meantime the Legislature of the State passed an act authorizing certain persons to build a street railway upon certain streets in the City of New York which were enumerated in the act.

Held, that the streets of the city, being publici juris, were under the unqualified control of the Legislature, and neither the city nor the adjoining proprietors were entitled to compensation.

People vs. Kerr, 27 N. Y., 188.

Davis vs. New York, and Milhau vs. Sharp were followed in a subsequent case in New York.

Coleman vs. Second Av. R. R. Co., 38 N. Y., 201.

In 1874 the people of the State of New York adopted the following constitutional amendment, which, in its legal effect on street railway grants, is not essentially different from the provisions of the Michigan Constitution of 1850.

"Sec. 18. The Legislature shall not pass a private or local bill in any of the following cases: * * * Granting to any corporation, association, or individual the right to lay down railroad tracks. Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever. * * * The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which, in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, be first obtained, or, in case the consent of such property owners cannot be obtained, the general term of the Supreme Court, in the district in which it is proposed to construct, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such road ought to be constructed or operated, and their determination, confirmed by the Court, may be taken in lieu of the consent of the property owners."

The Broadway Surface Railroad Company was organized under a general law, and under the constitutional amendment of 1874, acquired by contract with the municipal authorities of the City of New York, the right to construct and operate a street railroad on Broadway in that city. The company was authorized to mortgage its property and franchises as security for loans made to it.

The company built and operated the road, and executed a mortgage thereon to secure bonds issued by it.

The Legislature, under the power reserved by the Constitution, "to amend, alter or repeal," repealed and annulled the charter of the company so that the corporation became and was dissolved.

In a suit instituted by the Attorney-General to wind up the affairs of the corporation under a statute authorizing it, the important question arose whether the local grant by the City of New York did not survive, and in perpetuity, the dissolution and death of the corporation. To obtain a determination of this question, the Attorney-General commenced a supplementary action in the name of the people of the State, and it was objected that the State had no such interest in the controversy as would enable it to maintain such a suit. The case was finally disposed of by the Court of Appeals.

People vs. O'Brien, 111 N. Y., 1.

Chief Justice Ruger, in preparing the opinion of the Court, starts out with the following instructive statement:

"It will not be unprofitable, at the outset, to recall some of the prominent incidents attending the origin and operation of the Broadway Surface Railroad Company, for the purpose of obtaining a clearer view of the situation of the parties, and their relation to the subject of the action.

"On May 13, 1884, that company filed articles of association and became incorporated as a street railroad company under the provisions of chapter 252 of the laws of 1884, a general act passed to authorize the formation of such corporations, pursuant to the mode introduced by the amendment to the Constitution of 1874. By such incorporation the company became an artificial being, endowed with capacity to acquire and hold such rights and property, both real and personal, as were necessary to enable it to transact the business for which it was created, and allowed to mortgage its franchises as security for loans made to it, but having no present authority to construct or operate a railroad upon the streets of any municipality. This right, under the Constitution, could be acquired only from the city authorities, and they could grant or refuse it at their pleasure. The Constitution not only made the consent of the municipal authorities indispensable to the creation of such a right, but, by implication, conferred authority upon them to grant the consent, upon such terms and conditions as they chose to impose, and upon the corporation the right to acquire it by purchase.

"The framers of the Constitution, evidently treating the privilege as a valuable one, which should be disposed of for the benefit of the municipality, to those who would pay the highest price for it, gave the municipal authorities the exclusive right to grant the privilege, which had theretofore been exercised by the Legislature alone, and authorized its acquisition by contract from such municipality. (In re Cable Co., 109 N. Y., 32; Mayor, etc., vs. T. & L. R. R. Co., 49 id., 657.) The subsequent legislation of the State confirms this view, for at times it has provided that such right might be sold at auction, and by chapters 65 and 642 of the laws of 1886 makes it obliga-

tory upon the municipalities to dispose of such right by public auction to the highest bidder."

After referring to some other matters not important here, the opinion continues:

"It is not claimed that the State has any legal interest in the determination of these questions, or that the receiver has not ample power at law to obtain possession of such assets as he may be entitled to, or to protect the property of the corporation from unlawful claims. It is claimed that the action is maintainable under the provisions of section 1 of chapter 310 of the laws of 1886, by virtue of the provision making it the duty of the Attorney-General, upon the dissolution of a corporation by legislative action, 'immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation.'

"The complaint shows that previous to the commencement of the action the Attorney-General had brought a suit, in accordance with the statute, to wind up the affairs of the corporation; that a receiver had been appointed therein, and that such action was still pending undetermined. It then proceeds to allege that in consequence of various enumerated difficulties in obtaining possession of the property by the receiver, this action was brought, 'in aid of the former action to prevent a multiplicity of suits and to carry out the provisions of chapter 310 of the laws of 1886.'

"It is not easy to see on what theory such an action can be maintained. The State has no interest entitling it to intervene to prevent a multiplicity of actions between other parties. Neither does the action seem necessary or proper in aid of the former action.

"The mode by which the provisions of chapter 310 are to be carried out are specially provided by that act to be through the instrumentality of a receiver, and it is not

claimed that the receiver lacked power to litigate and settle any of the questions presented by this complaint. The receiver might, perhaps, have brought an action similar in character to this, and would have had a legal interest, if any, in the property to be affected by it; but the State has no such interest, and has no greater authority to intervene in the litigation of controversies between individuals and corporations than any other indifferent party. (People vs. Booth, 32 N. Y., 397; People vs. Ingersoll, 58 id., 13; Matter of the N. Y. Elevated R. R., 70 id., 339; People vs. B., F. & C. I. R. R. Co., 89 id., 93; People vs. A. & S. R. R. Co., 57 id., 161.)"

The first case cited is especially apropos, and adds significance to the language of Chief Justice Ruger. There was a controversy in the City of New York about the possession and control of the fire department of the city, and the Attorney-General commenced a suit in the name of the people of the State to determine the question. The Court of Appeals dismissed the case, for the reasons stated by the Court as follows:

"The corporation of the City of New York has abundant capacity to maintain suits to defend its property and possession; and it is questionable whether any lack of diligence in the exercise of this part of its power has ever been manifested. But, however wanting in energy its spirit of litigation may be, the plaintiffs are not called upon to incite the city to activity, nor to become the voluntary champion of its wrongs, whether real or imaginary. The people of the State, like all other parties to actions, must show an interest in the subject matter of the litigation to entitle them to prosecute a suit, and demand relief. This they have utterly failed to do in this case, and, for that reason, the complaint ought to have been dismissed by the courts below."

People vs. Booth, 32 N. Y., 397.

As heretofore suggested, there is but little difference in legal effect between the provisions of New York Constitution and those of Michigan, and it is, therefore, not at all surprising that the Supreme Court of Michigan should have reached precisely the same conclusion on the question whether the State has any interest whatever in a local street railway grant.

In Maybury vs. Mutual Gas Co., 38 Mich., 154, the city of Detroit made a grant to a gas company in which it was stipulated that the grantee should not enter into any combination with, or sell out to, any other gas company, and if it did so the consent granted should cease and become null and void.

The company violated this stipulation, and the city made an application for leave to file an information to deprive the company of its franchise, as it was claimed to be, of laying gas pipes in the streets.

In denying the application, the Court, in an opinion by Campbell, C. J., among other things, said:

"But the permission to lay these pipes does not differ in any respect from that required for laying railways over land, or ditches through it. It is not a State franchise, but a mere grant of authority, which, whether coming from private owners, or public agents, rests in contract or license, and in nothing else. A violation of the contract, or an unauthorized intrusion, must be redressed as all ordinary wrongs are redressed, by the usual legal remedies. It in no way concerns the State whether the power is granted or withheld, nor whether the corporation has or has not fulfilled its agreements. The injured party has a remedy for any grievance, but the State is no more interested than it would be in the question whether or not a railroad company has lawfully acquired its right of way. This Court has heretofore refused to recognize the encroachment of a corporation on a highway as sub-

ject to be reached by quo warranto, and we discover no better reason for interfering in the present case."

And the same rule has been applied to street railway grants.

People vs. Fort Wayne & Elmwood Ry. Co., 92 Mich., 522.
Attorney General vs. Detroit Suburban Ry. Co., 96 Mich., 65.

If the local authorities acted as the agents of the State Legislature, it is plain to be seen that the State as the principal would be an interested party, and the only party entitled to a remedy in the courts.

The Constitution of Wisconsin contains no provisions relegating the control of the public highways to the municipalities of the State, and the legislation in that State relative to street railways proceeds upon the theory that the municipal ordinances granting the use of the streets are to be considered as laws of the State, passed by the local authorities as agents of the State, and in the exercise of a part of the legislative power of the State.

In a case that arose in that State, an information in the nature of a quo warranto was filed against a street railway company for the purpose of vacating the charter and annulling the existence of the corporation, and for the appointment of a receiver to wind up its affairs, for alleged violations of the municipal ordinance under which it was using the public streets.

The Court held that the information would lie.

State vs. Madison St. R. Co., 72 Wis., 612.

The legislation and the reasoning of the Court are both shown by the following extracts from the opinion of the Court, pp. 618-620:

"By the peculiar provisions of our statute under which the defendant became incorporated, there does not seem

to be any doubt but that this ordinance, which conferred upon the company these privileges and franchises, has the force and effect of a statute of the State, and is essential to its very corporate existence.

"But the ordinance has the force and effect of a law of the State by the terms of the statute itself. All such ordinances are declared by the charter to have such effect, and it has such force and effect by becoming a part of the statute by its own terms, and is embodied in it.

"By Sec. 1862, R. S., 'corporations for constructing,' etc., 'street railways may be formed under chapter eighty-six, and shall have powers and be governed accordingly. Any municipal corporation may grant to any such corporation, under whatever law formed, such use, and upon such terms as the proper authorities shall determine, of any streets within its limits, for the purpose of laying single or double tracks, and running cars thereon, for,' etc. Every such road shall be constructed upon the most approved plan for such roads, and shall be subject to such reasonable rules and regulations, and the payment of such license fees as the proper municipal authorities may by ordinance from time to time prescribe. This statute requires obedience to such an ordinance. A violation of the ordinance is a violation of the statute.

"The Common Council, in passing the ordinance, acted as the agent of the State, and as public officers by virtue of such delegated authority. The streets are for the public use, and so also are the street railways, affording increased advantages and facilities to the public, and they are primarily under the control of the Legislature, and the power of the municipalities in respect thereto is entirely derived from the Legislature.

"What the Common Council does within that power is done by the Legislature through its agency."

V.

In view of the constitutional powers and rights of municipal corporations in Michigan, and the fact that in making street railway grants they act for themselves, and not as the agents of the State Legislature under delegated authority, it is an invulnerable legal proposition that they can make such grants exclusive for a limited term of years.

There are a number of cases where exclusive grants have been held void, but in each and every one of them the Court has disposed of the question as one of delegated authority, and has inquired simply whether an exclusive grant was within the power and authority conferred upon the municipality by the Legislature.

> **Saginaw Gas Light Co. vs. Saginaw, 28 Fed. Rep., 529.**
> **Grand Rapids, etc., vs. Grand Rapids, etc., Co., 33 Fed. Rep., 659.**
> **Birmingham, etc., Ry. Co. vs. Birmingham St. Rv. Co., 79 Ala., 465.**
> **Parkhurst vs. Capital City Ry. Co., 23 Oreg., 471.**

Other cases, although proceeding on the very same theory of delegated power, have sustained exclusive grants for a term of years.

> **Newport vs. Newport Light Co., 84 Ky., 166.**
> **Des Moines, etc., Co. vs. Des Moines, etc., Co., 73 Ia., 513.**

The conflict between these two classes of cases is not very important in the case at bar, for the reason that in

Michigan, as we have conclusively shown, the question is not one involving the mere construction of a statutory delegation of authority, but is one of constitutional interpretation and original power. The question is whether under the constitution and laws of Michigan the Common Council of the City of Detroit and the Detroit City Railway had power to make Section 2 of the Ordinance of November 24, 1862, a part of their contract.

There is no material legal difference between the power to make an exclusive street railway grant and the power to make a perpetual one.

In People vs. O'Brien, 111 N. Y., 1, hereinbefore cited, the constitutional and statutory provisions were substantially the same as those involved in the case at bar, and it was held that the grant made by the City of New York to the Broadway Surface Railroad Company was a grant in perpetuity; that it was valid; and that it survived the dissolution of the corporation.

At p. 40 the Court says:

"When we consider the mode required by the statutes and the Constitution to be pursued in disposing of this franchise, the inference as to its perpetuity seems to be irresistible, for it cannot be supposed that either the Legislature or the framers of the Constitution intended to offer for public sale property the title to which was defeasable at the option of the vendor, or that such property could be made the subject of successive sales to different vendees as often as popular caprice might require it to be done.

"Neither can it be supposed that they contemplated the resumption of property, which they had expressly authorized their grantee to mortgage and otherwise dispose of, to the destruction of interests created therein by their consent.

"We are, therefore, of the opinion that the Broadway Surface Railroad Company took an estate in perpetuity in Broadway through its grant from the city, under the authority of the Constitution and the act of the Legislature. It is also well settled by authority in this State that such a right constitutes property within the usual and common signification of that word. (Sixth Ave. R. R. Co. vs. Kerr, 72 N. Y., 330; People vs. Sturtevant, 9 id., 263.)"

The constitutional provision in New York has already been quoted in full in this brief. It contains no limitation upon the power of the local authorities in fixing the terms and conditions on which they will give their consent to the construction of a street railway. I will now quote Section 3 of the act under which the Broadway Surface Railroad Company was incorporated for the purpose of showing that no statutory limitations are placed upon the local power:

"Any company organized as aforesaid, or any existing street surface railroad company or corporation hereafter organized for the purpose of building and operating a street railroad, may construct, maintain, operate, use and extend a railroad or branches on the surface of the soil, through, upon and along any of the streets, avenues, roads or highways of such cities, towns and villages, and also through, along and upon any private property which said company may acquire for the purpose, and may also construct such switches, sidings, turnouts and turntables and suitable stands as may be necessary for the convenient working of such road; provided that the consent in writing of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be after the passage of this act first obtained. The con-

sent of such owners shall be acknowledged as are deeds entitled to be recorded. In any city the Common Council acting subject to the power now possessed by the Mayor to veto ordinances, and in any village the Board of Trustees shall be the local authorities to give all the consents required under this act in respect of such city or village. Provided, that where in any city the exclusive control of any street, road, highway, avenue or property which is to be used or occupied by any such company is, by law, vested in any local authority other than the Common Council of such city, the consent of the local authorities, in whom such exclusive control is so vested, shall be also obtained."

Laws of New York, 1884, p. 310.

Sec. 7 of the same act provides that the local authorities may, at their option, sell the franchise on any route at auction, and that the notice of sale shall contain "the conditions upon which the consent of the local authorities to the construction, maintenance, use, operation, or extension of a surface street railroad thereon will be given."

The Michigan Constitution places no restrictions on the local power, and leaves the whole subject of the terms and conditions to the local discretion, without any express limitations, and with only such implied ones as are inherent in the subject matter. Our statutory provisions are framed in recognition of the constitutional power of the local authorities, and expressly authorize them to fix and determine the terms and conditions on which they will grant the local consent.

Limitations upon the local power, therefore, must be found elsewhere than in the constitution or the statutes.

At this point it is advisable to examine the cases in which exclusive grants have been held invalid, and ascertain the grounds on which they rest.

In Saginaw Gas Light Co. vs. Saginaw, 28 Fed. Rep., 530, an exclusive grant was made to a gas light company to use the streets for laying gas pipes. Neither the city nor any private customer was obliged to buy gas from the company, so that it was perfectly competent for the city to light the streets with any other method of lighting, such as naphtha, kerosene, or electricity.

The city subsequently made a grant to an electric light company, permitting it to use the streets for the erection of poles, running of wires, etc.

It was claimed that this grant impaired the contract with the gas company within the meaning of the Constitution of the United States, and United States District Judge Brown sustained the Federal jurisdiction on the ground that the local authorities, in fixing the terms and conditions of the grant, were acting for the State, and the case was the same "as if the two companies received their entire power and franchises directly from the State."

He also said:

"But if the authority exercised be that of the State itself, whether acting directly through its Legislature, or indirectly through a subordinate body, to which the Legislature has delegated a portion of its power, it is competent for this Court to inquire whether it has exceeded its authority and violated the constitutional provision in question."

Examining the question whether the exclusive grant to the gas company excluded electric lighting and electric light companies, the learned judge held that it did not, and while he also expressed the opinion that it was invalid so far as it undertook to exclude other gas companies, the opinion was based entirely on the theory that the local authorities acted under authority delegated to them by the Legislature, and which might have been exercised by the Legislature itself.

In Birmingham, etc., vs. Birmingham, etc., Co., 79 Ala., 465, an exclusive grant in perpetuity was made to a street railway company, and the Court held that the municipality had no statutory authority to make such a grant, and if the statutes had conferred any such authority, they would conflict with a constitutional provision prohibiting the General Assembly from "making any irrevocable grants of special privileges or immunities."

As this provision could not apply to local grants except on the theory that the local authorities acted as the agents of the General Assembly, it is plain to be seen that the case is without force or authority in Michigan.

In Parkhurst vs. Capital City Ry. Co., 23 Oregon, 471, the Court went so far as to hold that the city of Salem had no authority to grant the exclusive use of particular streets so as to prevent parallel lines on the same streets; but this goes so much beyond reason and authority that the case is only valuable as showing the length to which the doctrine of a strict construction of a delegated power may be carried.

The Oregon case is in conflict with the practical result in a recent case in Indiana.

Indianapolis, etc., Co. vs. Citizens', etc., Co., 127 Ind., 369.

The case of Gale vs. Kalamazoo, 23 Mich., 344, is a typical one of delegated power and strict construction.

The right to maintain a public market is a State franchise that must emanate from the Legislature; and the village of Kalamazoo had been authorized by the Legislature to establish and maintain public markets. Instead of building a market house itself, the village entered into a contract with George H. Gale to build one, and in this contract it agreed to exercise its legislative power as stipulated in the contract. The Court held the contract

was beyond the power of the village, and Judge Cooley, in stating for the Court the substance of the contract, said:

"The contract in question, however, is not only entered into in pursuance of an exercise of legislative authority on the part of the village, but it undertakes to control that authority in several important particulars:

"1. It requires the appointment of a competent manager or clerk to attend to, and supervise, the market-house, and to require the observance of the ordinances and by-laws relative to the marketing within the village. For this purpose legislative action would have been essential, and must consequently have been within the contemplation of the parties when the contract was made.

"2. It binds the authorities not to permit any other market-house, provided the one erected by the plaintiff should prove large enough to accommodate the public; and

"3. It undertakes that the authorities shall restrain the ordinary marketing within defined bounds.

"In each of these particulars this contract differs widely from one which should merely put the city in possession of a market-house to be controlled and disposed of according as subsequent circumstances should appear to render desirable."

The fact that these cases of delegated power do not apply to the case at bar is well illustrated by the State vs. Cin. Gas, etc., Co., 18 Ohio St., 262, where an exclusive grant was made to a gas company, and it was held to have been unauthorized by the Legislature; but the decision was put on the express ground that the right to use the public streets of the city was a franchise which could only emanate either directly or indirectly from the Legislature. The action was an information in the nature of a quo warranto, so that the case is in conflict with the settled law of Michigan on this subject.

The case of Norwich Gas Light Co. vs. Norwich City Gas Co., 25 Conn., 19, is one where a local grant in terms exclusive, had been made exclusive by a subsequent act of the Legislature, and the Court held the act unconstitutional on general principles, because it created a monopoly and was in conflict with the provision of the Connecticut Bill of Rights, that "no man or set of men, are entitled to exclusive public emoluments or privileges from the community."

In concluding our comments on the cases holding exclusive grants invalid, we desire to quote from the opinion of United States Circuit Judge Jackson in Grand Rapids E. L. & P. Co. vs. Grand Rapids E. E. L. & F. G. Co., 33 Fed. Rep., 659, as it contains a correct statement of our position, as well as a full and complete recognition of its entire accuracy.

In that case an exclusive grant for fifteen years was made to an electric light company, and before the fifteen years expired a conflicting grant was made to another electric light company.

The Federal Court took jurisdiction of the case on the theory that the Common Council of Grand Rapids acted as the agent of the Legislature in making these grants, which is of itself a sufficient explanation of the decision of the Court, holding the exclusive grant void; but Judge Jackson, in his opinion, makes the following clear and discriminating statement of the case as he understood it, and of the principles with which it was surrounded:

"The present case involves no consideration of the power of the Legislature to have conferred upon the complainant the exclusive right which it claims to the use of the streets of Grand Rapids for the purpose of laying down electric wires. It is conceded that the Legislature of Michigan, subject to the constitutional reservation of the right to amend, alter or repeal its charter, could have

directly conferred upon the complainant the exclusive privilege of occupying the streets of the city for the distribution of electric light for public and private use. It is also conceded that the Legislature, subject to the same constitutional reservation, had the authority to confer upon the Common Council of Grand Rapids the power to grant the same exclusive right; and the question is, has it delegated such authority to the city or its Common Council in the powers with which it had invested it or them? It is manifest that this question is not controlled by such cases as Gas Co. vs. Light Co., 115 U. S., 650, 6 Sup. Ct. Rep., 252; Water Works vs. Rivers, 115 U. S., 674, 6 Sup. Ct. Rep., 273; Gas Co. vs. Gas Co., 115 U. S., 683, 6 Sup. Ct. Rep., 265; Water Works vs. Water Works, 120 U. S., 64, 7 Sup. Ct. Rep., 405; Slaughter-House cases, 16 Wall., 36, and similar cases relating to legislative grants of exclusive privileges, to be exercised within the limits of municipal corporations. These cases, however, establish one important principle, which has a direct bearing, and throws light upon the question here involved, and that is, that a municipality, under the usual powers conferred of providing a supply of light and water for the city and its inhabitants, and of establishing and regulating its streets, does not possess the exclusive authority over those subjects; that, notwithstanding the grant of such powers to a municipal corporation, the State, in whom rests the paramount rights to, and control over, all franchises and all public highways, may exercise its sovereign authority over all such subjects, and confer rights and privileges exclusive or not, as it may deem proper within the limits of the municipality. These legislative grants of special franchises, whether exclusive or not, to be exercised in cities, are not sustained, nor do they rest upon any implied repeal of powers previously delegated to the municipal corporation; but they are sup-

ported upon the ground of sovereign right and authority which has never been parted with by the State.

"To confer exclusive rights and privileges, either in the streets of a city or in the public highways, necessarily involves the assertion and exercise of exclusive powers and control over the same. Nothing short of the whole sovereign power of the State can confer exclusive rights and privileges in public streets, dedicated or acquired for public use, and which are held in trust for the public at large. This brings us directly up to the inquiry whether the Legislature of Michigan has delegated to the City of Grand Rapids the State's sovereign power and control over the streets of that municipality. If the charter powers of the city have invested it or its Common Council with the whole sovereign power and exclusive control over the streets within its limits, it might lawfully confer upon the complainant the exclusive right of user, which the ordinance of 1880 undertook to grant. If, however, the city or its Common Council possessed no such exclusive power and control, then the grant which it attempted to make to complainant was 'ultra vires,' and, therefore, void so far as it purports to confer exclusive privileges in or over the streets of the city."

It is certain that if Judge Jackson had known that the Constitution of the State had transferred the whole sovereign power of the State over public streets and highways to the local authorities he would have reached a different conclusion as to the validity of exclusive grants. It would seem from the language used by the learned judge that the counsel who argued that case made concessions which were unwarranted, because nothing can be clearer than that the Legislature of Michigan has no power to grant an exclusive or any other right to use the streets and highways for any purpose.

We will now refer to the two cases hereinbefore cited where exclusive grants made by the local authorities in virtue of a delegated power were sustained.

In Newport vs. Newport Light Co., 84 Ky., 166, the gas company was invested in express terms by a provision contained in its charter with the right "to furnish any city, town, district, corporation or locality, or any public institution, manufacturing establishment, or private premises with gas or other light, for such time and on such terms as may be agreed upon by the parties."

The charter of the city authorized the municipality "to construct, maintain and operate gas works, and to pass all ordinances necessary to regulate the same."

In consideration that the company would construct gas works, and would furnish gas to the city and to private consumers of a certain quality, and at certain fixed prices, the grant to the company was made exclusive for twenty-five years.

Held, that the exclusive grant was valid.

In Des Moines Street R. R. Co. vs. Des Moines B. G. Street Ry. Co., 73 Ia., 513, a section of the code gave the City Council of Des Moines "power to authorize or forbid the location and laying down of tracks for railways and street railways."

In determining whether the Council had authority under this clause to grant the exclusive right to use the streets of the city for a limited number of years, the Court said:

"It may be conceded that the future growth and wants of a city cannot be foreseen. The most that can be said is that they may ordinarily be predicted with reasonable approximation for a limited time. From this we are inclined to think it follows that an ordinance providing for an exclusive right in perpetuity, however necessary it might be to contract for the service involved in the exer-

cises of the right, would be unreasonable, and might be declared void. In Dill. Mun. Corp., Sec. 715, the author, commenting upon Davis vs. Mayor of New York, 14 N. Y., 506, says:

"'The judgment of the Court rests upon the sound principle that the powers of a corporation, in respect to the control of its streets, are held in trust for the public benefit, and cannot be surrendered or delegated by contract to private parties; and hence the resolution of the City Council, authorizing private persons to construct and operate a railroad upon certain terms, without power of revocation, and without limit as to time, was not a license or act of legislation, but a contract, void, however, because, if valid, it would deprive the corporation of the control and regulation of its streets.'

"In the case at bar the time limited was thirty years, which does not seem to be unreasonable, and especially in view of the fact that the lines were operated at a loss for fourteen years. Possibly thirty years, or any shorter time, should be deemed too long in any case, if the contract were such that the street railroad company could not be required to meet the public wants as the same should arise. In the case at bar, two miles only of track were specially stipulated for, but it is not denied by plaintiff that the acceptance of the ordinance which allowed its assignor to lay a track upon all the streets raised an implied contract upon the part of its assignor to lay so much track as reasonably might be demanded by the public. At the time of the commencement of this controversy, the plaintiff and its assignor had, in fact, laid ten miles of track, and was contemplating the laying of still more. It may be that neither the plaintiff nor its assignor did all that it should; but such a question is not before us. The ordinance appears to us to be reasonable; and our holding is that, under our statute, which empowers cities to au-

thorize or forbid the laying down of a street railroad track, a City Council may make a reasonable provision by contract for present and future street railroad service, and may secure the company contracted with against the impairment of its profits for a limited time, and against interference with its extension during the time, if a larger and better or more immediate service can be thus obtained."

VI.

The Legislature of Michigan has conferred on cities and villages general power to agree with street railway corporations on the terms and conditions on which they may be permitted to make use of the streets, and in view of the constitutional policy of the State which we have considered, it is clear this authority includes the power to make such a grant exclusive or perpetual if the interests of the municipality, in the judgment of the local authorities, can be best subserved thereby.

Conceding for the purposes of the argument that the local right to control the streets is dormant under the Constitution until life is put into it by the Legislature, then the question in dispute in this case presents itself in three different stages:

1. The constitutional power of the local authorities being dormant is not the creation of a township or village or city sufficient to bring it into full force? Whenever the Legislature creates a local government, does not the Constitution of the State clothe that government with full control of the public highways without special authorization by the Legislature?

2. If special authority is necessary, need it consist of anything more than the general power usually conferred on municipal corporations to improve and maintain public highways, and to control and regulate their use and enjoyment by the public? Must not any such general authority receive a much broader and more liberal construction under the Constitution of Michigan than would obtain in States where the Legislature has full control and the local authorities act as its agents and not in their own right?

3. The Legislature having expressly authorized the municipal authorities, without any limitation whatever, to agree on the terms and conditions of these local grants, is there any possible escape from the proposition that in Michigan the power conferred is just as broad as that of the Legislature would be if the Constitution of the State had left that body in possession of the supreme authority over the streets and highways formerly exercised by it, and is still exercised in most of the other States?

The case we have in hand, therefore, calls for a construction of the power conferred on the municipal authorities to agree on the terms and conditions, and the logical and legal effect of the Constitution of the State of Michigan is to resolve all doubts that might otherwise exist on the question whether this general authority confers power to make these local grants exclusive or perpetual.

VII.

Considered either as an exercise of delegated or of original power, it was competent for the Common Council of the City of Detroit to agree with the Detroit City Railway that it and its successors and assigns should have the first right to build extensions and new routes as provided in section 2 of the ordinance of November 24th, 1862.

Whatever may be the general rule as to the strict construction of a delegated power of this kind, this much is certain, that where the Legislature confers on a municipality an untrammeled power to fix and determine the terms and conditions on which it will grant its own consent to the construction and operation of a street railway, the question whether the terms and conditions of any particular grant are valid or not depends on the facts and circumstances of each case, and there are no arbitrary and unyielding rules of law, formulated by the courts, which are applicable to the subject.

This being so, before jumping to the conclusion that the provisions of Section 2 of the Ordinance of 1862 are invalid, it is wise and proper that we should, in the first place, look at the question in retrospect.

If the Court will turn to Rec., p. 122, your honors will see that an ordinance substantially the same as the ordinance of November 24th, 1862, was approved May 24th, 1862, and that the grantees therein named were H. K. Sanger, R. N. Rice, J. W. Kelsey, John J. Harris, John H. Wiggins, Amos B. Merrill and John L. Lawrence.

On p. 127 will be found the following notice:

"Controller's Office:

Detroit, August 29th, 1862.

Street Railways—In pursuance of a resolution of the Common Council, the undersigned will receive sealed proposals during the ensuing thirty days for constructing the street railways specified in the ordinance entitled 'An ordinance to permit certain persons to establish and locate street railways in and through the streets of the City of Detroit.' The names of the corporators in said ordinance have been stricken out by the Common Council, and the time for the completion of said railways is extended eight months. Copies of the ordinance will be furnished on application.

D. C. WHITWOOD,
Controller."

On the same page will be found the Controller's report:

"Detroit, September 30th, 1862.

To the Hon. The Common Council:

Gentlemen—Herewith I respectfully submit the only proposal that has been received for constructing our street railways. It is from C. S. Bushnell. Accompanying it is a letter of E. N. Wilcox, Esq., the attorney of Mr. Bushnell, and which I have deemed it pertinent to place before you. The City Attorney has marked out on the map, in this office, the respective points to which Mr. Bushnell's proposal would carry the roads; and an inspection of the map will give the Council a correct idea of the distances.

D. C. WHITWOOD,
Controller."

If the Court will now turn to Sec. 3528, How. Stat., you will see that between the date of the approval of the ordinance of November 24, 1862, and its acceptance, May 9, 1863, viz.: On February 18, 1863, the train railway act was

amended so as to authorize street railway corporations organized under it to execute mortgages "to borrow money for the purpose of constructing and operating the road or roads proposed to be constructed by them."

This history gives us some little idea of the difficulties which had to be overcome in order to induce the investment of the capital necessary to inaugurate the street railway system of the Detroit City Railway.

It appears that the provisions of Section 2 were a part of the advertised terms and conditions on which proposals were solicited by the city, and upon which Mr. Cornelius S. Bushnell and his associates made the proposal which was finally accepted, and acted upon by the parties.

In 1862 the center of the business portion of the city was the corner of Woodward and Jefferson avenues, and it will be observed that it is provided in section two "that the railways on Grand River street, Gratiot street and Michigan avenue shall run into and connect with the Woodward avenue railways in such direction that said railways shall continue down to, and form, each of them, one continuous route to Jefferson avenue."

It is self-evident that with these great diagonal lines on Michigan, Grand River and Gratiot avenues, running through the city to the business center, it was of the utmost importance to the people of Detroit that all extensions and new routes should, so far as possible, run into these diagonal lines, as furnishing the shortest and most direct routes to the Campus Martius and the business center.

With the city so laid out and so situated, was it not clearly competent for the Common Council to agree that the Detroit City Railway should have the first option to build extensions and new routes?

Were not the people of the City of Detroit as much interested as the street railway company in having one general street railway system built up for their benefit and accommodation?

Can any one conceive of more reasonable and sensible terms and conditions than those contained in section two?

There can be no better proof of the intelligence displayed by the parties in agreeing to section two than the zig-zag and indirect routes by which the defendants propose to furnish street railways to those portions of the city which are naturally tributary to the main lines now owned and operated by the complainant.

The ordinance of December 4, 1894, provides for somewhat cheaper fares, but that is offset by the provisions putting the entire burden of the paving between the tracks and rails on the city or the abutting proprietors; and to whatever extent the terms and conditions of the ordinance are more favorable to the city than the ordinance of November 24, 1862, as amended, they are more than overcome by the disadvantages resulting from the want of connections with the railways of the complainant.

The truth is, the entire railway system of the city should be operated and controlled by one company; and it is equally true that, however much the city may seek for competition between rival companies, sooner or later their financial necessities will compel them to amalgamate or combine.

Such has been the experience of the City of Detroit with rival gas companies, and such has been the universal experience elsewhere; so that there is no practical reason which should lead this Court into a departure from the law and justice, by a decision, the only object and purpose of which would be to find some way by which the City of Detroit can repudiate a contract honestly and fairly en-

tered into, and acted upon by the parties for more than thirty years.

Considering the question in the light of the undoubted constitutional rights and powers of municipal corporations in the State of Michigan, there can be but one answer:

VIII.

The Detroit Railway has made an admission and concession in this case which illustrates the practical wisdom and good sense of section 2 of the ordinance of November 24, 1862.

The Detroit Railway ordinance was approved December 4, 1894, and a month later the biennial session of the State Legislature for 1895 began.

Early in the session the Detroit Railway caused a bill to be introduced, a copy of which is in evidence (Rec., 116-122).

The object and purpose of the bill appears from the testimony of Mr. Henry A. Everett, a large stockholder and one of the officers of the Detroit Railway (Rec., 82-90).

The first section of the bill is as follows:

"Section 1. The People of the State of Michigan enact, Whenever any street railroad company in the City of Detroit, authorized to operate street railway lines therein, shall desire the use of any of the roads, tracks, poles and wires of any other street railroad company, situated within the territory in said city bounded on the west side by Third street, on the north by Beech street and Adams avenue, on the east by St. Antoine street, and on the south by Detroit river, it shall be competent for such company to petition the Common Council of the City of Detroit for

permission to acquire the use of such part of the roads, tracks, poles and wires situated within said territory, in common with such other company upon any street which it needs to make use of for the accommodation of the traveling public, and to acquire the same under the provision of this act."

The territory described is the central portion of the City of Detroit, and the purpose of the bill was to enable the Detroit Railway, by condemnation proceedings, to make those same terminal connections with the system of the Detroit Citizens' Street Railway Company as would result if that company was accorded the first right or option granted to it by section 2 of the ordinance of November 24, 1862.

Mr. Everett's testimony and this proposed law are a complete demonstration of our proposition that the provisions of section 2 are as much in the public interest as in that of the company, and that what is attacked as illegal is founded in the best business judgment when examined from the standpoint of the people of the City of Detroit.

Indeed, the best interests of the people of Detroit will be subserved by compelling the city to live up to its contract with the Detroit Citizens' Street Railway Company.

In that way the people would get the benefit of one central system, all under one management, and subject to one municipal contract.

This contract expires in 1909, and is subject to modification before or at that time, and there is no reason why the parties should be hampered by the illegal, inequitable and speculative grant to the Detroit Railway which does not expire until 1924.

IX.

The complainant is entitled to the protection of the Federal Constitution.

This is shown by the cases cited in this brief, and it is not necessary for us to enter into an elaborate discussion of the question here.

If the local authorities, in making street railway grants, act in a legislative capacity as the agents of the Legislature, there can be no doubt but that the questions whether the provisions of section two are valid, and whether they are impaired by the ordinance of December 4, 1894, are of federal cognizance.

On the other hand, if the argument we have submitted is correct, that the local authorities exercise an original power conferred on them by the Constitution of the State, it does not follow that the complainant is not entitled to the protection of the Federal Constitution, for it is a plain proposition that the supremacy of the Constitution of the United States cannot be evaded by a State Constitution which takes a portion of the sovereign legislative power of the State from the Legislature and distributes it among the municipal corporations of the State.

The direct, or indirect, action of the Legislature of a State is not the only State action prohibited by the Constitution of the United States and the Fourteenth Amendment.

Acting as the agent of the Legislature by virtue of authority delegated by the Legislature is quite a different thing than acting as the agent of the State by virtue of authority conferred by the organic law of the State; but one is just as much State action as the other.

We submit that the complainant is entitled to the relief prayed, because "such is the mandate of the Constitution of the United States."

X.

The complainant is entitled to the relief prayed, as a matter within the discretion of a court of equity.

Courts of equity have large discretionary powers, and owe their existence to the fact that it is not always just or advisable to enforce the strict rules of the law.

In 1857, 1858 and 1859 the Legislature of this State passed a number of acts relative to the Detroit & Milwaukee Railroad in plain violation of the Constitution of 1850, but they were acted upon, and shares of stock and bonds and mortgages were issued in reliance thereon without any question until 1884, when the State, by its Attorney-General, filed an information in the nature of a quo warranto to test their validity.

Attorney-General vs. Joy, 55 Mich., 94.

After referring to the facts the Court, in an opinion by Chief Justice Cooley, among other things, said:

"For the State, under such circumstances, to take steps for the annihilation of all these shares and securities by legal decision would have all the appearance of bad faith and of public repudiation of solemn State engagements. The several acts of legislation were not, indeed, contracts; but when the State, by valid legislation, invites the public to make specific investments, it may well be said that its faith is pledged to do nothing on its part which shall have for its purpose to render the investments worthless.

"It may be said, and is said, that there can be no estoppel against the State in respect to such questions; and this is undoubtedly true. It is further said that the questions the Court is called upon to decide are purely legal

questions. But when the dignity and honor of the State are involved the judiciary has them in charge quite as much as either of the other departments of the government; one department as much as another must see that they suffer no detriment at its hands, while it is acting as representative of sovereignty within its constitutional sphere of duty. If, therefore, the appeal to the Court is to any extent an appeal to the discretion of the Court, it becomes its plain duty to see that when it speaks for the State it shall speak the voice of justice and maintain unimpaired the public faith, and it must do this even though the legislative or the executive departments were demanding something different. But in this case we do not understand that any department of the government has demanded or desired anything different, or that the people or any part of them have any wish inconsistent with public faith and integrity."

XI.

The plaintiff in error, in its bill, claims that the acts of the defendants are in violation of Sec. 10, Art. I., and the Fourteenth Amendment of the Federal Constitution. If our contention is right, that the grant to plaintiff in error was valid, then it was impaired by the grant to the Detroit Railway, defendant in error, and the case is one for review in this court.

Nagle vs. Wright, 101 U. S., 791.
City Railway Co. vs. Citizens' R. R. Co., 166 U. S., 557.

It is submitted that the decree of the Supreme Court of the State of Michigan and of the Circuit Court for the County of Wayne should be reversed and a decree entered for plaintiff in error.

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MICHAEL BRENNAN,
FRED A. BAKER,
Counsel for Plaintiff in Error.

Brief of Walter F. Smith, for
Supreme Court of the United States.
Filed Mar. 28, 1898.

October Term, 1897.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE CITY OF DETROIT, AND THE DETROIT RAILWAY.

No. 236.

IN ERROR TO THE SUPREME COURT OF MICHIGAN.

Brief for the Plaintiff in Error.

DAVID WILLCOX,
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Of Counsel for Plaintiff in Error.

Forum Print, 74 William St., N. Y.

Supreme Court of the United States.

ON ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

OCTOBER TERM, 1897.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE DETROIT RAILWAY and THE CITY OF DETROIT.

No. 236.

BRIEF,
for the Plaintiff in Error.

Statement.

(The references are to the printed pages of the record.)

The plaintiff in error is a street railway company of the State of Michigan, organized for the purpose of owning and operating lines in the city of Detroit, and is the successor in interest of a similar corporation named the Detroit City Railway. The rights asserted by it arise from an ordinance of the Common Council of that city passed upon November 24, 1862. This provided that the Detroit City Railway was "exclusively "authorized to construct and operate railways as herein "provided, on and through" (certain specified streets) "and "through such other streets and avenues in said city as may "from time to time be fixed and determined by vote of the "Common Council of the said city of Detroit, and assented to "in writing by said corporation. * * And provided the

Statement.

"corporation does not assent in writing, within thirty days "after the passage of said resolution of the Council, ordering "the formation of new routes, then the Common Council "may give the privilege to any other company to build such "route" (p. 12).

The ordinance provided also, that "the powers and "privileges conferred by the provisions of this ordinance "shall be limited to thirty years from and after the date of "its passage" (Sec. 20, p. 15). By an ordinance passed November 14, 1879 (Sec. 5, p. 20), it was provided further that "the powers and privileges conferred and obli- "gations imposed on the Detroit City Railway Company by "the ordinance passed November 24, 1862, and the amend- "ments thereto are hereby extended and limited to thirty "years from this date." Although there is high authority for the principle that perpetual grants of this character are lawful (People *vs.* O'Brien, 111 N. Y., 1, 40; People *ex rel.* Woodhaven Gas Co. *vs.* Deehan, 153 N. Y., 528), no question of the sort is now involved. By the latter ordinance the rights of the plaintiff in error were, in any event, extended until October 14, 1909. Indeed, this has been already adjudged in a suit between the City and the plaintiff in error (Rec., pp. 3, 4; 64 Fed. Rep., 628) to have been the effect of that ordinance. It may be added that the construction of the road was a sufficient consideration for the grant, and that the acceptance of the ordinance both fully appear in the record, and in any event would be presumed (City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 568).

On November 20, 1894, the Common Council passed an ordinance granting to several third parties the right to construct street railways upon portions of certain streets upon which the plaintiff in error was maintaining and operating street railways, and also the right to construct, maintain and operate railways on certain other streets, alleys and public places in the city of Detroit, without giving to plaintiff in error the opportunity to decide whether it would construct the same (pp. 4, 5, 34-45). The present suit was brought in the Circuit Court for the County of Wayne and State of Michigan, to enjoin the grantees named in the latter ordinance,

and also the City, from acting thereunder, upon the ground that it impaired the contract between the City and the plaintiff in error arising from the ordinances first aforesaid (p. 10). The bill was dismissed (pp. 465, 466), and, on appeal to the Supreme Court of the State, the decree of dismissal was affirmed (p. 476). From that decree the present writ of error has been duly prosecuted to this court (pp. 477–480).

It has very recently been held that, even in the absence of an expressed intention of the sort, a grant of authority to construct and operate railways in the streets includes not merely streets then existing, but also such as may exist thereafter (People *ex rel.* Woodhaven Co. *vs.* Deehan, 153 N. Y., 528). The language of the ordinance of November 24, 1862, however, leaves no room for doubt upon that subject. So far as any streets were thereafter fixed and determined by vote of the Council as a new street railway route, the exclusive right was given to the grantee to construct and operate the railways thereon, provided it agreed within thirty days "to build such route"; only in case it failed to so agree could "the Common "Council give the privilege to any other company to build such "route" (p. 12). The subsequent acts of the parties gave the same practical construction to the ordinance; for, from 1862 until 1894, it was constantly recognized that the grantees under this ordinance had the right to elect whether they would construct such new street railway routes as were from time to time fixed and determined by the Council, before the right to do so could be granted to any third party (Principal Brief for Plaintiff in Error, pp. 8-13)

The defendants have heretofore laboriously sought to raise doubts regarding the precise meaning of this ordinance, and thereupon to apply the rule that public grants are to be construed strictly against the grantee. But this is a mere waste of time. The terms of the ordinance are perfectly clear and speak for themselves. There is nothing doubtful to construe, and therefore construction is out of place.

> "Where the words of a law, treaty or contract have a "plain and obvious meaning, all construction in hostility

Statement.

" with such meaning is excluded. This is a maxim of " law and a dictate of common sense; for, were a differ- " ent rule to be admitted, no man, however cautious and " intelligent, could safely estimate the extent of his " engagements, or rest upon his own understanding of a " law until a judicial construction of those instruments " had been obtained." Green *vs.* Biddle, 8 Wheaton, 1, 90.

" Whenever invoked (the rule of strict construction), " comes attended with qualifications and other rules no " less important. It is by the light which each contrib- " utes that the judgment of the court is to be made up. " The object in construing penal as well as other statutes " is to ascertain the legislative intent. That constitutes " the law. If the language be clear, it is conclusive. " There can be no construction where there is nothing to " construe. The words must not be narrowed to the exclu- " sion of what the legislature intended to embrace, but " that intention must be gathered from the words, and " they must be such as to leave no room for a reason- " able doubt upon the subject." United States *vs.* Hartwell, 6 Wall., 385, 395, 396.

" Such (insurance) contracts are open to construc- " tion like all other contracts needing interpretation, but " are subject to it only when, upon the face of the " instrument, it appears that its meaning is doubtful or " its language ambiguous or uncertain. An elementary " writer says: 'Indeed, the very idea and purpose of " 'construction imply a previous uncertainty as to the " 'meaning of a contract, for when this is clear " 'and unambiguous there is no room for construction " 'and nothing for construction to do.' (2 Pars. on " Cont., 500.)" Dwight *vs.* Germania Ins. Co., 103 N. Y., 341, 347.

" The rule that public grants are to be construed " strictly against the grantee means simply that nothing " shall pass by implication, except it be necessary to " carry into effect the obvious intent of the grant. But " the obvious intention of the parties, when expressed in " plain language, cannot be ignored in a public any " more than in a private grant. A construction that " would lead to false consequences or unjust or incon- " venient results, not contemplated or intended, should " be avoided in a grant as well as in a statute" People *ex rel.* Woodhaven Co. *vs.* Deehan, 153 N. Y., 528, 532.

Statement.

So, too, the defendants have devoted much space to attacking the ordinance upon the ground that it constitutes an exclusive grant. The mere fact that a grant of rights in the streets of a municipality is exclusive does not render it unlawful. When a particular business has no existence save as it is authorized by law, the statute which creates it may also make it exclusive, for it has no existence save in the manner and form in which it is thus created (Cooley on Torts, 278; Tiedeman on Limitations of the Police Power, Sec. 105). "The "power of the legislature to grant to a private individual or "corporation the exclusive right to use the streets of a city "for the purpose of laying down gas pipes or other similar "conduits in the roadbed has been questioned; but it has "been held very generally that such an exclusive legislative "grant is valid, if it does not conflict with some express pro-"vision of the State constitution" (Tiedeman on Municipal Corporations, Sec. 296). This is fully settled in this court.

In New Orleans Gas Company *vs.* Louisiana Light Company, 115 U. S., 650, the Gas Company was entitled by an act of the legislature to the sole and exclusive privilege of manufacturing and distributing gas in the city by means of pipes laid in the streets. Thereafter the city attempted to grant to the Light Company the right to lay pipes in the streets for that purpose. This suit was brought by the Gas Company to enjoin the Light Company from acting under said grant. The court held that the legislative grant of the exclusive right to supply gas to the municipality and its inhabitants through pipes and mains laid in the public streets, and upon condition of the performance of the service by the grantee, was a grant of a franchise vested in the state in consideration of the performance of a public service, and after performance by the grantee was a contract protected by the Constitution of the United States against state legislation to impair it, and that, therefore, the complainant was entitled to the relief prayed. "If the state "can, by contract, restrict the exercise of her power to "construct and maintain highways, bridges and ferries, "by granting to a particular corporation the exclusive "right to construct and operate a railroad within certain "lines and between given points, or to maintain a bridge "or operate a ferry over one of her navigable streams "within designated limits; if she may restrict the ex-

"ercise of the power of taxation by granting exemption "from taxation to particular individuals and corpora- "tions, it is difficult to perceive upon what ground we "can deny her authority—when not forbidden by her "own organic law—in consideration of money to be ex- "pended and important services to be rendered for the "promotion of the public comfort, the public health or "the public safety, to grant a franchise, to be exercised "exclusively by those who thus do for the public what "the state might undertake to perform either herself or "by subordinate municipal agencies" (p. 665).

In New Orleans Water-Works Company *vs.* Rivers, 115 U. S., 674, the court held that a legislative grant of an exclusive right to supply water to a municipality and its inhabitants through pipes and mains laid in the public streets, and upon condition of the performance of the service by the grantee, was a grant of a franchise vested in the state, in consideration of the performance of a public service, and, after performance by the grantee, was a contract protected by the Constitution of the United States against state legislation to impair it. The same thing was held in St. Tammany Water Works *vs.* Water Works, 120 U. S., 64.

In Louisville Gas Company *vs.* Citizens' Gas Company, 115 U. S., 683, the same rules were applied to an exclusive grant of the right to supply gas.

In Plank Road Company *vs.* Railroad Company, 103 Michigan, 585, by the terms of its charter complainant was put into possession of a highway and was to retain such possession for the purpose of construction and operation of its road. The court held that there was no doubt of the power of the legislature in such a case to make the privilege exclusive.

To the same effect are Citizens' Water Co. *vs.* Bridgeport Co., 55 Connecticut; People *ex rel.* Woodhaven Co. *vs.* Deehan, 153 N. Y., 528; Atlantic City Works *vs.* City, 39 N. J. Eq., 367, 374; City of Newport *vs.* Newport Light Co., 84 Ky., 166.

If the present could properly be deemed an exclusive grant, these authorities would apply here because, as will be seen hereafter, in Michigan all grants of rights in the streets are necessarily made by the local municipalities, and not by the State.

This is not, however, really a grant of an exclusive franchise. The only serious objection urged against exclusive

grants is that the municipal authorities should not deprive themselves of the power to make additional improvements as the needs of the municipality may require, and confer upon private parties the right of decision in that regard. But this ordinance is not open to that objection. Under its terms the Council has full power to "fix and determine" any additional streets through which railways shall be constructed. The plaintiff in error has no control whatever over the question what new roads shall be built; nor has it any exclusive right to construct all such roads as shall be built. When the Council has "fixed and determined" any additional streets, the plaintiff in error has thirty days within which to determine whether it will undertake the construction of the new lines. If it concludes not to do so, the Council may give the privilege to any other company (p. 12). In either event the Council will have determined upon the improvement, the construction of the road will be equally assured and the necessities of the public will be equally served. The fact is merely that, in consideration of the construction of such roads as the Council deemed necessary in 1862, it granted for a limited time an option of thirty days during which the plaintiff in error might decide whether it would construct any additions thereto which the Council might fix and determine.

An examination of the opinion of the court below leads to the conclusion that its decision is based upon the *exclusive* character of the grant by the City to the Street Railway Company. But if the word "exclusively" were not in the ordinance, the plaintiff in error would still be entitled to the relief which it asks, because the City has violated its contract in refusing to it and granting to third parties the right to construct and operate railways through other streets and avenues fixed and determined by the Common Council. In the first instance it is not a question of *exclusive* right; it is rather a question of enjoying *the* right originally granted to the Company. The statute gives the *exclusive* right to use and operate the tracks when laid, and the rule of decision (Street Ry. Co. *vs.* West Side Co., 48 Mich., 433) prevents multiplying tracks in the streets, so that it is immaterial whether the plaintiff in error was "*exclusively* authorized," or merely "authorized" to construct and operate railways.

Statement.

There is, therefore, nothing in the objection to this ordinance as an exclusive grant, both because it does not in fact possess that character and because, if it did, that alone would not render the ordinance unlawful.

The defendants have urged still further that this is an exclusive grant only of authority to construct railroads to be operated by animal power and have cited some authorities as establishing the rule that a grant of that nature does not prevent a grant by the City of authority to construct a road to be operated by power of a different character.

But these have no application to the present case. Here the grant was of "exclusive authority to construct and operate "railways as herein provided on and through" (certain specified streets), "and through such other streets and avenues in said "city as may, from time to time, be fixed and determined" (Ordinance of Nov. 24, 1862, Sec. 2, p. 12). Then by a later section it was provided that the cars should be drawn by animal power only, at a rate not exceeding six miles per hour (Sec. 7, p. 14). It will be seen, therefore, that the right to construct railways in the streets of the City was granted generally to the grantee, and by a later provision the City saw fit to impose the limitation that cars should be drawn thereon only by animal power at a rate not exceeding six miles per hour. This was not a limitation of the right to construct railways, but merely a regulation as to the manner of their use when they should be constructed.

It was entirely competent for the City to release the grantee from this restriction. Accordingly it did so by ordinance passed January 3, 1889. This provided that permission and authority were given to the grantee "to run its cars at a rate of speed "not exceeding ten miles an hour and is hereby required to run "thereon at an average speed of not less than six miles per "hour and whenever it shall deem it advisable to substitute in "lieu of animal power, such system of electric or other motive "power, except steam, as shall seem best in its judgment, for "the purpose of properly and safely conducting its business "in said city of Detroit, upon any or all of its said lines now

" in use and operated or *hereafter* to be in use and operated " by said company " (pp. 429, 430).

This, therefore, relieved the railways then owned or thereafter to be owned by the Detroit City Railway of the regulation that they should be operated by animal power at a speed not exceeding six miles per hour. It recognized that the company's lines comprised both such as it then owned and such as it should thereafter own. As to both, it disposed of any claim that the provision of the original ordinances regulating the manner of operating the roads can now be asserted as a limitation of the grant. This was ruled exactly in City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 569.

These suggestions of the defendants are, therefore, without merit. The only question in the case is whether, after the grantees have fully carried out the terms of the grant to be performed upon their part and have undertaken the risk of constructing railway lines in what was relatively a small city, now that circumstances have somewhat changed, the grant can be repudiated upon the ground that the Council was without power to make it. No equitable ground has been or can be suggested for this course of action. Nor has it been or can it be claimed that the plaintiff in error will not fully serve the necessities of the public. So that, as just said, the contention that the Council was without power to make the grant constitutes the sole defense against complainant's right to relief.

It is submitted that this contention is without foundation, because the Council's action was authorized (1) by reason of the provisions of the constitution of the State, and (2) in any event by reason of its statutes.

Points.

FIRST.

The Council was authorized to pass the ordinance by reason of the provisions of the Constitution of the State.

In Michigan it is settled that the right of self-government is secured by the Constitution to the municipalities of the State (People *ex rel.* Le Roy *vs.* Hurlbut, 24 Mich., 44; People *ex rel.* Attorney General *vs.* Lothrop, 24 Mich., 235; People *ex rel.* Board of Commissioners *vs.* Common Council, 28 Mich., 228, 240; People *ex rel.* Attorney General *vs.* Common Council, 29 Mich., 108; Allor *vs.* Auditors, 43 Mich., 76, 98; Attorney-General *vs.* Common Council, 58 Mich., 213; Board of Police *vs.* Auditors, 68 Mich., 576; Detroit Street Railway Co. *vs.* City of Detroit, 64 Fed. Rep., 628, 637). "No busi-" ness which is in its nature municipal can be controlled by " State or any other outside authorities" (Allor *vs.* Auditors, 43 Mich., 76, 98).

The case of Gale *vs.* Kalamazoo, 23 Mich., 344, has been much relied upon by the defendants, but the facts of that case were wholly different from the present. The municipality there attempted to establish a monopoly in the business of marketing by a contract providing that there should be no markets in the city save such as should be controlled by the contractor. It was held that in the absence of express authority the city had no power to do this.

In Taylor *vs.* Street Railway Company, 80 Mich., 77, the ordinance was similar to that involved here. No question was made regarding the power of the council to pass it. The court did, indeed, say that the council could confer no greater right upon the defendant than was authorized by its charter, and proceeded to state the general rule that "municipal corporations derive their "sole source of power from legislative enactments." Counsel for defendants have laid much stress upon this, yet it is obviously without force regarding the effect of the provisions of the constitution upon the powers of the municipality.

The Constitution, therefore, provides that "the state shall " not be a party to, or interested in, any work of internal im-

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First. The ordinance was authorized by the constitution.

"provement, nor engaged in carrying on any such work, except "in the expenditure of grants to the state of land or other "property" (Art. XIV, Sec. 9). The streets and highways of a State constitute its greatest work of internal improvement. By reason of this constitutional provision the State could not be a party to or interested in any such work nor engaged in carrying on the same. Accordingly the Constitution contained provisions recognizing that the local authorities would be in control thereof, as follows: "There shall be "elected annually, on the first Monday of April, in each organ- "ized township * * * one commissioner of highways, "* * * and one overseer of highways for each highway "district" (Art. XI, Sec. 1). "The legislature shall "not * * * vacate nor alter any road laid out by com- "missioners of highways, or any street in any city or village, "or in any recorded town plat" (Art. IV, Sec. 23).

It is well settled that under these provisions the local authorities control the construction and use of the highways.

> In People *ex rel.* Hubbard *vs.* Township Board of Springwells, 25 Mich., 153, the legislature passed an act authorizing commissioners to be appointed by the Governor to improve Fort Street West, in the township of Springwells. These commissioners were authorized to collect tolls and the township was required to issue bonds and submit to taxation for the purposes of the improvement. The court held that the legislature had no constitutional power to pass such a statute, because the state was prohibited from becoming interested in any work of internal improvement or engaged in carrying on such work. It said "that a macadamized road is a 'work of internal "'improvement' is manifest. The shortness of the road "does not change its character. The restriction is not "against great works, but against all works of that kind, "and the case comes within the language and intent of "the prohibition. And we can only repeat what was "said in Ryerson *vs.* Utley. 16 Mich. R., 269, that 'the "'Constitution does not permit the state either to "'contract a debt for a public improvement or to expend "'in its construction anything but the grants which it "'has received for the purpose; and any legislation "'which attempts any other expenditure must be di-

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" 'rectly within the constitutional inhibition, and, there-
" fore, void' p. 275. The question whether the work
" is carried on by the state, in no way depends on the
" sources from which the money is drawn to pay for it.
" It is a state work if directed, planned and executed
" by the state agency, and while the fact that the
" money is charged on a certain locality may make the
" proceeding objectionable on independent grounds, it
" does not alter its character. * * * This street, being
" a public highway, was by law put under the charge of
" the local authorities. The constitution (Art. XI,
" Sec. 1) requires an election every year of a township
" commissioner of highways and of an overseer of high-
" ways for every highway district. Their powers were
" subject to legislative modification, but no legislation
" could abolish the offices or take away all their func-
" tions" (pp. 155, 156.)

In People *ex rel.* Park Commissioners *vs.* Common Council, 28 Mich., 228, an act was passed creating a board of park commissioners for the city of Detroit, and authorizing them to lay out parks and issue bonds. The court held the statute invalid as an unlawful interference with the right of local self-government. It held that as regards property rights and matters of exclusively local concern, the state has no right to interfere and control by compulsory legislation the action of municipal corporations; that the people of other parts of the state, through their representatives, have no more authority to dictate to the city of Detroit what fountain shall be erected at its expense for the use of its citizens or at what cost it shall purchase, and how it shall improve and embellish a park or boulevard for the recreation and enjoyment of its citizens, than have the rest of the community to dictate to an individual what he shall eat, drink or wear.

In People *ex rel.* Maybury *vs.* Mutual Gas Co., 38 Mich., 154, the city of Detroit made a grant to a Gas Company in which it was stipulated that the grantee should not enter into any combination with, or sell out to any other gas company, and if it did so, the consent granted should cease and become null and void. The company violated this stipulation, and the state made an application for leave to file an information to deprive the company of the franchise, as it was claimed to be, of laying gas pipes in the streets. The court denied the application. It said:

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"The permission to lay these pipes does not differ "in any respect from that required for laying railways "over land, or ditches through it. It is not a state "franchise, but a mere grant of authority, which, "whether coming from private owners, or public agents, "rests in contract or license, and in nothing else. A "violation of the contract, or an unauthorized intrusion, "must be redressed as all ordinary wrongs are redressed, "by the usual legal remedies. It in no way concerns "the state whether the power is granted or withheld, "nor whether the corporation has or has not fulfilled its "agreements. The injured party has a remedy for any "grievance, but the state is no more interested than it "would be in the question whether or not a railroad "company has lawfully acquired its right of way. This "court has heretofore refused to recognize the encroach-"ment of a corporation on a highway as subject to be "reached by *quo warranto*, and we discover no better "reason for interfering in the present case" (pp. 155, 156). This was approved in People *vs.* Railway Co., 92 Mich., 522, 524, and again in Attorney-General *vs.* Railway Co., 96 Mich., 65, 68, the court saying regarding *quo warranto* proceedings by the state to test the validity of a grant to operate a street railway: "It is a matter "of local interest, in which the municipality and its people "are interested. So long as they are content, we do not "think the state is interested" (p. 69). Similarly in People *vs.* O'Brien, 111 N. Y., 1, 33, 34, 41, where the constitution provided that the legislature could not pass any private or local act empowering a corporation to lay down railroad tracks, the court expressed the view that the state had no interest in the franchise, and could not maintain an action to enforce a forfeiture thereof.

In Davies *vs.* Supervisors of Saginaw Co., 89 Mich., 295, the legislature passed an act taking certain highways out of the control of the townships, cities and villages in which they were located, and putting them in charge of a Board of County Road Commissioners created by the statute. The court held that the act was unconstitutional. It said: "This act cannot be sus-"tained.

"1. It seeks to divest certain local officers, recognized "as such and provided for by the Constitution, of the "functions of their offices, and to confer those functions

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"upon a board, appointed by a power removed from that "locality, and not responsible to local authority.

"The functions of township officers who are continued "by constitutional enactment are as clearly within the "contemplation and protection of the Constitution as "are the officers themselves, and the legislature has no "more power to deprive those officers of their authority, "and confer that authority upon officers not of local "selection, than it has to abolish the offices. It is just "as essential to local self-government that the functions "of elective officers be preserved to such officers as that "the right of election be protected; indeed, it is the "local management of local concerns, by and through "the medium of officers of their own selection, that is "sought to be protected. Strip the officers of a munici-"pality of their functions, and you rob the munici-"pality of its vitality. * * *

"2. The act undertakes to convert certain highways "already laid out—presumably by township authority—"into state roads, and to give to the board of super-"visors authority to convert other roads into state "roads.

"State roads are such only as have been laid out by "state authority. * * *

"Section 23 of Article 4 of the Constitution expressly "prohibits the discontinuance by the legislature of "highways laid out by township authorities. The right "of the legislature to vacate state or territorial roads "is unquestioned. If highways may be converted into "state roads by legislative declaration, and state roads "may be discontinued at the will of the same body, "then the constitutional provision may be easily "avoided" (pp. 293-301).

In Detroit Citizens' Street Ry. Co. *vs.* City of Detroit, Circuit Court of Appeals, 22 U. S. App., 570; 64 Fed. Rep., 628, the statutes and ordinances now involved were before the court, and the question was whether the city had power to make a grant extending beyond the time limited for the corporate existence of the corporation. The court held that under these provisions, when construed together and with regard to the peculiar constitutional policy of the state limiting the legislative power in respect of direct interference with purely local concerns of cities, the general charter powers of the City of Detroit over its

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streets, the general purpose the legislature had in view, and other sections of the same acts which provided for acquiring rights of way and for mortgaging street railways, including their rights of way, every such mortgage to be deemed a mortgage upon real estate, the power of the City of Detroit to give the consent required was not a power merely implied and therefore to be strictly construed, but was directly conferred and authorized, a grant of such easement of way in the streets as was requisite for the purposes to be accomplished; and as such power was conferred without express words of limitation, and the "terms and conditions" on "which the grant was to be "made were left to the discretion of the local govern- "ment, the term of such a grant was not necessarily "limited by the duration of the franchises of the "grantee." The court said, the "right to occupy par- "ticular streets with necessary tracks and equipments" by reason of the constitution, "could not come from the "state, and, if acquired at all, must come from "the municipality (p. 641). If this view of the "limitations upon the legislative power of the "state be sound, it must follow that when the state "acts in the only way that it can act—by conferring "upon the municipality the powers necessary to the "establishment of such public facilities of intra-city "travel—and does this in general terms, limitations "upon the discretion of the municipality in the exercise "of that power ought to be plainly apparent before the "court will be justified in declaring their existence (pp. 642, 643). The power to make an irrevocable "contract giving an easement of some considerable du- "ration is an inseparable incident in any scheme for "furnishing such public facilities as a street railroad. "The duration of such grants must be a question of dis- "cretion to be exercised by some public authority. "That the exercise of that discretion should be left to "the local government as a question of purely local in- "terest seems most consistent with the proprieties of the "case and most in accord with the decentralizing "policy so peculiar to the state of Michigan" (p. 647).

The cases of Saginaw Gas Light Co. *vs.* City, 28 Fed. Rep., 529, and Grand Rapids Company *vs.* Company, 33 Fed Rep., 659, involved the question of exclusive franchises and were decided without reference to the pro-

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visions of the Michigan constitution. They are, therefore, without application here.

The State, then, could not be a "party to or interested in" the streets and highways and the legislature could not vacate or alter the same. The result of these constitutional provisions was that the City and not the State had the power regarding streets, which under most constitutions, would be in the State. The subject was beyond the control of the legislature (New Orleans *vs.* Houston, 119 U. S., 265, 275, 276).

Nevertheless, it is claimed that this grant can be repudiated after the lapse of thirty-two years solely because it was not made by the legislature but by the council. Whatever force this contention might have under the law in some other States, in the present case it is clearly without merit. By express provision of the constitution, the streets were constructed and controlled not by the State but by the City, so that the latter did not stand to the State in the usual relation of a mere agency of government. The legislature could neither lay out, construct nor change the streets.

It is, therefore, idle to claim that the legislature was supreme in regard to the manner in which property vested by virtue of the terms of the constitution in an independent municipal body should be used by its owners. The people saw fit to exclude the State from any rights of ownership in the highways. They inserted no provision in the constitution giving the legislature control over property regarding which they had in terms provided that the State, which was itself merely one of the people's agencies of government, should not own or be interested in it. On the contrary, so far as concerns the suggestion that the power of making a grant such as the present was necessarily in the legislature alone, the constitution disabled and excluded the legislature from exercising any such power by providing that corporations could not be created by special act (Art. XV., Secs. 1, 10).

In the absence of any provisions conferring upon the legislature power in the premises, there can be no ground for claiming that the ultimate control of such property was in the legislature and not in its constitutional owner, the City. At the ut-

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most, the legislature has power to exercise such part of the functions of the State as are apportioned to it and not withheld from it by the terms of the constitution. "As to the property it "thus holds for its own private purposes, a city is to be re- "garded as a constituent in state government, and is en- "titled to the like protection in its property rights as any natural "person who is also a constituent" (Board of Commissioners *vs.* Council, 28 Mich., 228, 240). There can be nothing in the contention that the legislature has inherent power to control the use of property from the construction, ownership and alteration of which the State is expressly excluded. The right to control the property is merely an incident of ownership, and as that by the constitution is vested in the City, so also must be the right to control that which the City thus owns.

Elsewhere the State ordinarily holds all rights of the public, and the inferior municipalities are mere instruments of government exercising no functions save those conferred upon them by the legislature. But here, under the terms of the constitution, the State could not own or be interested in the streets, while the City has constructed and owns them. In Michigan, the City as the constitutional owner of the streets could grant any rights which it is elsewhere held must be granted by the State, because it is the owner thereof.

The Council, therefore, was authorized to pass the ordinance by reason of the provisions of the constitution of the State.

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As just seen, under the terms of the Constitution, the legislature could neither lay out, construct nor alter the streets. Yet the defendants claim that the legislature was supreme regarding the manner in which they should be used. It has already been pointed out that, in the absence of any construction, ownership or right to alter the streets upon the part of the State, there is no support for the claim that it has the right to control them. In the nature of things, the State has no greater power of control over property from the ownership of which it is expressly excluded by the constitution, than any private individual has regarding property which he does not own. In addition to this, however, it will now be shown that any power of control which could possibly have remained in the legislature was delegated by that body itself to the Council.

It was provided by statute that the Common Council of the City of Detroit should have authority "to control, prescribe "and regulate the manner in which the highways, streets, "avenues, lanes, alleys, public grounds and spaces within said "city shall be used and enjoyed" (Laws of 1857, Act No. 55 at p. 97). This alone would be sufficient to empower the municipal authorities to authorize construction of railways in the streets (Detroit Citizens' Street Railway *vs.* City, 64 Fed. Rep., 628, 636; Elliott on Roads and Streets, 563; Dillon on Municipal Corporations, 4th Ed., § 719).

But the statutes provided also that "all companies or cor- "porations formed for such purposes" (construction and operation of street railways) "shall have the *exclusive* right to use "and operate any street railways constructed, owned or held by "them; provided, that no such company or corporation shall "be authorized to construct a railway under this act through "the streets of any town or city without the consent of the "municipal authorities of such town or city, and under such "regulations and upon such terms and conditions as said au- "thorities may, from time to time, prescribe; provided, further,

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" that after such consent shall have been given and accepted " by the company or corporation to which the same is granted, " such authorities shall make no regulations or conditions " whereby the rights or franchises so granted shall be destroyed " or unreasonably impaired, or such company or corporation " be deprived of the right of constructing, maintaining and " operating such railway in the street in such consent or grant " named, pursuant to the terms thereof" (Laws of 1855, as amended by adding Sec. 34, Compiled Laws of Michigan, 1871, Vol. 1, p. 827; Howell's Statutes, Sec. 3527). While these provisions were not quite so full when the ordinance was passed, since March 5, 1867 they have been and now are the law by which the Council is controlled (1 Howell's Statutes, 906).

Thus the statutes authorized the Council to grant to street railway companies the right to construct railroads in the streets which the grantee should have the *exclusive* right to use and operate; they provided still further that after the consent of the Council had been given, it could do nothing whereby the rights or franchises granted should be destroyed or impaired or the company deprived of the right of constructing, maintaining and operating such railway pursuant to the terms of such consent. The legislature, therefore, expressly authorized the Council to make grants of an exclusive character and provided that, after it had done so, the Council could take no action impairing the grant. It is fully settled in this court that an exclusive grant made under such authority would be entirely lawful. "Conceding that the " legislature of the State alone had the right to make such a " grant, 'it may,' as was observed in Wright *vs.* Nagle, 101 U. " S., 791, 794, 'exercise this authority by direct legislation, or " ' through agencies duly established having power for that " ' purpose. The grant, when made, binds the public, and is " ' directly or indirectly the act of the State. The easement is " ' a legislative grant, whether made directly by the legislature " ' itself or by any one of its properly constituted instrumental- " ' ities' " (City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 563; Penn Life Co. *vs.* Austin, 168 U. S., 685, 694; New Orleans Water Works Co. *vs.* New Orleans, 164 U. S., 471).

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As already stated, the ordinance in question provided that the company therein named should be "exclusively authorized " to construct and operate railways as herein provided on and through" (certain streets therein named), " and *through such* " *other streets and avenues in said city as may from time to* " *time be fixed and determined by vote of the Common Coun-* " *cil of the said city of Detroit*, and assented to in writing " by said corporation. * * * And provided the corporation " does not assent in writing within thirty days after the pass- " age of said resolution of the Council ordering the formation " of new routes, then the Common Council may give the privi- " lege to any other company to build such route" (Rec., p. 12).

The legislature, then, conferred upon street railway companies "the *exclusive* right to use and operate any street railway constructed, owned or held by them." The Common Council enacted that the predecessor of the plaintiff in error should be "*exclusively* authorized to construct and operate railways on and through" certain streets. These provisions are to be construed in harmony with the rule that "a Common Council cannot properly so multiply street railway tracks in a particular street as to interfere with the rights of the general public in the street" (Street Ry. Co. *vs.* West Side Co., 48 Mich., 433, 434). The practical result is that the railway company received by statute from the legislature the exclusive right to *use* and *operate*, and by ordinance from the Common Council the exclusive right to *construct* and *operate* a railway on and through certain streets then named and other streets to be thereafter selected at the pleasure of the Common Council.

In the absence of proof, the acceptance of this ordinance by the grantee would be presumed (City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 568). But the record shows that the ordinance was duly accepted by the grantee, which at once proceeded to construct its railways on and through the streets which were therein fixed and determined, and, from time to time, as other streets were fixed and determined, constructed railways thereon.

The Council, therefore, acting within its statutory author-

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ity, made this grant; the grantee duly accepted it; the statute provided that thereafter the Council could do nothing whereby the rights or franchises granted should be destroyed or impaired or the company deprived of the right of constructing, maintaining and operating such railway. pursuant to the terms of the consent or grant.

Upon what ground, then, can it be claimed that the Council may now take action impairing this grant and depriving the company of the right of constructing and operating its railway in accordance therewith? The grant was of the right during a limited number of years to construct and operate railways on and through (1) certain streets expressly named, and (2) such other streets and avenues as might from time to time be fixed and determined by the Council. As to the latter, however, the grantee had no power of selection—the Council reserved that right to itself—and the grantee had merely a period of thirty days after the Council had made such selection to determine whether it would undertake the work. In case it did not do so, the Council was at liberty to contract with other parties. It cannot possibly be claimed that the Council had not full power when the ordinance was passed to designate as many streets as it saw fit. The defendants' claim is that the legislature did not confer upon the Council power to reserve to itself the right to designate further streets in the future. There can be no doubt that, even upon the defendant's theory of the law, the legislature had that power, but the defendants maintain that a general provision authorizing the Council to make grants which would be exclusive did not empower it to reserve the right to designate other streets as additional lines of road might be needed. It will be seen that the defendants' contention reduces itself to very narrow limits. It is without merit on principle or authority.

The defendants have heretofore laid much stress upon the contention that this grant was bad because it was exclusive and tended to establish a monopoly, and have cited a number

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of cases to the effect that in the absence of an express grant of such authority by the legislature, a municipality is without power to make an exclusive grant (Jackson Co. *vs.* Interstate Co., 24 Fed. Rep., 306; Saginaw Gaslight Co. *vs.* City, 28 Fed. Rep., 529; Grand Rapids Co. *vs.* Co., 33 Fed. Rep., 659; Norwich Gas Light Co. *vs.* Norwich Co., 25 Conn., 19; State *vs.* Cincinnati Co., 18 Ohio St., 262; Birmingham Railway Co. *vs.* Railway Co., 79 Ala., 465; Long *vs.* Duluth, Supreme Court of Minnesota, 51 N. W., Rep., 913; Denver Co. *vs.* Co., 2 Colorado, 673; Parkhurst *vs.* Capital City Co., 23 Oregon, 471; Booth on Street Railway Law, Sec. 108).

This contention, however, can have no weight in this court. It is settled that an exclusive grant is not in itself unlawful, and that the legislature may delegate the power to make such a grant to the municipal authorities (*supra*, pp. 5-8, 18). In the present case the statute in terms provides that the City may make an exclusive grant and cannot withdraw its consent after it has been once given (*supra*, pp. 18, 19). There is, therefore, no ground to claim that the consent is unlawful because it constitutes an exclusive grant.

But in addition, as already said, this claim has no foundation in fact. This ordinance was not an exclusive grant and its terms did not establish a monopoly. The Railway Company was not given the right to determine where railways should in future be constructed nor the right to construct all such railways. The Council reserved to itself the right to designate new routes; the ordinance did not commit the discretion in that regard to the grantee. That was what was held to be the objectionable feature in Citizens' Railway Co. *vs.* Jones, 34 Fed. Rep., 579, and Knoxville *vs.* Africa, 77 Fed. Rep., 501, 509. From that objectionable feature the present case is quite free. The provision is merely that when new routes are fixed and determined by the Council, complainant shall have the right during thirty days to decide whether it will construct them. Its practical effect is merely the same as any grant of the right to construct street railroads. "A common council cannot properly so mul-

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" tiply street railway tracks in a particular street as to interfere " with the rights of the general public in the street" (Street Railway *vs.* West Side Co., 48 Mich., 433, 434). When the right to maintain and operate tracks in a given street is granted to one corporation, practically it is denied to all others (People *vs.* O'Brien, 111 N. Y., 1, 41 ; Fidelity Co. *vs.* Mobile Co., 53 Fed. Rep., 687 ; Indianapolis Cable Co. *vs.* Citizens Co., 127 Ind., 369.) But this does not have the effect of creating a monopoly, even where the State constitution prohibits the granting of exclusive privileges and franchises. In Booth on the Law of Street Railways, Sec. 55, it is said that " under the " general power conferred upon cities to control the use of their " streets and to prescribe the conditions upon which they may " be occupied by street railways, the local authorities have the " right to designate the streets which shall be subject to the " franchise and in what particular parts of the streets the " tracks shall be laid. This power is not affected by a con- " stitutional provision inhibiting the granting of special or " exclusive privileges, immunities or franchises. Such pro- " visions are limitations upon the power of the legislature, but " cannot be construed as a limitation on the power of a muni- " cipal corporation to designate streets in which the railway " may be constructed and to fix conditions upon which it may " be operated."

Necessarily the Council was authorized to grant prior rights to one corporation over those of another. The grant to one company also necessarily anticipated any grant to another. The option given to the grantee gave it merely a prior right to lay its railways in the streets and avenues thereafter to be determined by the Common Council. This, as just pointed out, was not an exclusive right and is open to no greater objection than any grant of the right to lay railroad tracks in a street. For all such grants are necessarily prior to any other grants in the same streets.

As already said, therefore, the defendants' attack upon the ordinance depends wholly upon its claim that it was not competent for the Council to reserve to itself the right to designate additional streets in the future.

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The Council, when the ordinance was passed, had power to name whatever streets it saw fit as those in which a street railway was authorized. Accordingly, it named a number of streets, and the Railway Company, by organizing and accepting the grant, became bound to construct its road in the streets named. The same course was to be pursued in the case of streets which might require railways in the future as was pursued in the case of streets which actually required railways at the time when the ordinance was passed. The Common Council merely reserved to itself the right to fix and determine upon what further streets railway tracks should be laid. This was properly the exercise of a duty devolving upon the municipal authorities (Citizens' Street Ry. Co. *vs.* Jones, 34 Fed. Rep., 579; Fort Worth Co. *vs.* Rosedale Ry. Co., 68 Texas, 169, 182). The arrangement was in accordance with ordinary practice. "The municipal authorities * * * may "name one or more routes in the original ordinance, and reserve "to themselves the right to determine when additional tracks "or routes will be rendered necessary by the requirements of "traffic" (Booth's Law of Street Railways, Sec. 61).

Mere lapse of time between the date of the grant and the laying of the tracks, even if it were due to the grantee's failure to act, would not impair its rights (Elliott's Law of Roads and Streets, 571; Booth's Law of Street Railways, Sec. 51; Brooklyn Central Co. *vs.* Co., 32 Barb., 358; Coney Island Co. *vs.* Kennedy, 15 App. Div., 588; Philadelphia Co. *vs.* Williams, 54 Pa. St., 103; Black *vs.* Reading Co., 58 Pa. St., 249; People's Co. *vs.* Baldwin, 14 Phila., 231; Ransom *vs.* Citizens' Railway Co., 104 Mo., 375). But in the present case, whatever delay there might be would be due not to the grantee, but entirely to the manner in which the grantor might decide to exercise the discretion which it reserved to itself to fix and determine new routes.

As a general principle, it is quite competent to grant rights regarding property to be designated or even to be acquired by the grantor in the future. There is no ground to claim that such rights are lost by failure of the grantor for a considerable time to designate

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the precise property covered by the grant; even if it has no existence at the time thereof, the rights granted attach as the property comes into existence (Bear Lake Irrigation Co. *vs.* Garland, 164 U. S., 1, 15, 16). In accordance with this general rule, when a grant is made by the government the precise subject matter of which is thereafter to be designated by the government itself, delay in making such designation, will not defeat the grant; when the designation is made it relates back to the original date of the grant (Railroad Co. *vs.* Smith, 9 Wallace, 95; Schulenberg *vs.* Harriman, 21 Wallace, 44; Railway Co. *vs.* Alling, 99 U. S., 463). The mere failure of the Council to fix and determine at any special time, the additional streets, therefore, could not prejudice the rights secured to the plaintiff in error when the designation should in fact be made.

As the Council had power to grant the right to build railways in the streets, there was nothing objectionable in the course pursued. It had power when the ordinance was passed to name whatever streets it saw fit as those in which a street railway was authorized. Accordingly, it named a number of streets and the Railway Company, by organizing and accepting the grant, became bound to construct the road in the streets named. Inasmuch, however, as the public necessities would doubtless increase, it was natural and proper to provide that the City should have the right to designate further streets for the purpose of forming new routes and the grantee should have the right to elect whether it would construct the road upon the streets so designated.

Accordingly the recent authorities show that defendants' claim that the ordinance was beyond the power of the Council because it reserved the right to designate further streets in the future, is without merit.

In City Railway Company *vs.* Citizens' Street Railroad Company, 166 U. S., 557, the Citizens' Street Railway Company of Indianapolis was organized in 1864, under a general act of the legislature authorizing such a company to be a body politic and corporation in perpetuity.

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Upon January 18, 1864, the Common Council of that city passed an ordinance authorizing the company to lay tracks upon designated streets and providing that the right to operate said railway should extend to the full term of thirty years, during which time the said authorities were not to extend to other companies privileges which would impair or destroy the rights so granted. In the following year, 1865, a supplemental ordinance was passed giving to the company the right to lay its tracks upon all the streets or roads within the corporate limits of the city and providing that in laying, constructing and operating the same the company should be governed by the provisions of the ordinance aforesaid. It will be seen, therefore, that the rights granted were far more comprehensive than those in the present case because they were an exclusive grant of the right to lay tracks upon all streets of the city. On April 7, 1880, the Council passed another ordinance providing that the original ordinance should be amended so as to read "thirty-seven" where the same then read "thirty." The Citizens Street Railroad Company which was the complainant below, duly succeeded to the rights of the grantee under these ordinances. Upon April 24, 1893, the Council, claiming that the extension of the ordinance was invalid, entered into a contract with the defendant, the City Railway Company, giving it permission to lay its tracks through a large number of streets, most of which were already occupied by the lines of the complainant company. The court held that the complainant had a contract with the city which the city was attempting to impair; that the ordinances granting the same were valid; that as the Railway Company had acted upon the ordinance extending the duration of the grant, the city was estopped from alleging that there was no consideration to support it; that in any event the continued operation of the road was a sufficient consideration for the grant, and that an acceptance thereof would be presumed from the fact that the amendment was beneficial to the corporation and that, therefore, the contract arising from said ordinances was in all respects valid

In Detroit Citizens' Street Railway Company *vs.* City of Detroit, 22 U. S. App., 570; 64 Fed. Rep., 628, the ordinances involved in the present case were under consideration. A suit was brought by the city against the Detroit

Points.

Second. The ordinance was authorized by the statutes.

City Railway, the Detroit Citizens' Street Railway Company and others, upon the claim that the rights of the plaintiff in error could not extend beyond the period of corporate existence of the original grantee and had, therefore, expired. The object of the suit was an injunction to compel removal of the tracks from the streets and restrain further operation of a street railway therein. The contention was that the general power conferred by statute upon the city to make grants of authority to construct and operate railways in the streets, should be deemed to be limited to the duration of the corporate existence of the grantee. The court held that this contention was without foundation; that the legislature had conferred upon the city all power in the premises which was possessed by the legislature itself, and that no limitations thereon would be implied. After considering the provisions of the constitution and statutes of Michigan, the court said: "If this view of the limitations "upon the legislative power of the state be sound, it "must follow that when the state acts in the only way "that it can act—by conferring upon the municipality "the powers necessary to the establishment of such "public facilities of intra-city travel—and does this in "general terms, limitations upon the discretion of the "municipality in the exercise of that power ought to be "plainly apparent before the court will be justified in "declaring their existence (pp. 642, 643). * * We "are thus led to conclude that these street railway acts "directly confer upon the municipalities of the state "power to grant to street railway companies such an "easement of way in the streets as is requisite for the "purposes to be accomplished. That power is conferred "without any express words of limitation. On the con- "trary, the 'terms and conditions' upon which the "grant is to be made are left to the discretion of the "local government. Unless there be some limitation "implied by other considerations not yet alluded to, the "term for which such a grant may be made is just as "much a matter about which municipal discretion is to "be exercised as any other of the terms of the grant (p. "646). * * The duration of such grants must be a ques- "tion of discretion to be exercised by some public "authority. That the exercise of that discretion should "be left to the local government as a question of purely "local interest seems most consistent with the pro-

" prieties of the case, and most in accord with the decen-
" tralizing policy so peculiar to the state of Michigan "
(p. 647).

In Africa *vs.* City of Knoxville, 70 Fed. Rep., 729, the city had consented to a railroad covering certain specified streets with a general statement including all the streets of the city then established or thereafter to be established. The Circuit Court held that this grant was good. Its decision was, however, reversed by the Circuit Court of Appeals, 77 Fed. Rep., 501, upon the ground that the power delegated to the city government was not an unlimited one, and that it had no power to delegate to a private corporation the decision of the question where street railroads should be located (p. 508). It will be seen that this radically differs from the present case, inasmuch as the City here has reserved to itself the right to fix and determine upon new routes, and the plaintiff in error has no right save merely to determine whether or not it will construct the railroads to be laid upon the routes so fixed and determined.

Other authorities supporting the ordinance are, Des Moines Railroad Co. *vs.* Street Ry. Co., 73 Iowa, 513; City *vs.* Newport Co., 84 Ky., 166:

Manifestly, therefore, not only the constitution but also the statutes of the state authorized the Council to pass this ordinance.

CONCLUSION.

The Decree should be reversed.

The statutes of Michigan describe the action of the city in passing this ordinance not as a license but as a grant (Howell's Statutes, Sec. 3527). And it is well settled that the ordinance constituted a contract between the city and the grantee.

Points.

Conclusion. The decree should be reversed.

(City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 567).

So this court has said that the charter of a gas company, "so far as it created a corporation with authority "to manufacture gas and to distribute the same by "means of pipes, mains and conduits, laid in the streets "and other public ways of (the city), constituted, to use "the language of this court in the case of the Delaware "Railroad Tax, 18 Wall., 206, 'a contract between the "'state and its corporators, and within the provision "'of the constitution prohibiting legislation impairing "'the obligation of contracts' and, therefore, 'equally "'protected from legislative interference, whether the "'public be interested in the exercise of its franchise "'or the charter be granted for the sole benefit of its cor-"'porators'" (New Orleans Gas Co. *vs.* Louisiana Light Co., 115 U. S., 650, 666).

The same thing is held in Citizens' Street Railway Co. *vs.* City Co., 56 Fed. Rep., 746, 64 Fed. Rep., 647; City *vs.* Western Union Co., 63 Fed. Rep., 68; Baltimore Co. *vs.* Mayor, 64 Fed. Rep., 153; Mayor *vs.* Africa, 77 Fed. Rep., 501; Central Trust Co. *vs.* Citizens' Co., 82 Fed. Rep., 1; Mayor *vs.* Second Avenue Co., 32 N. Y., 261; Matter of Thirty-fourth Street Railroad Co., 102 N. Y., 343; People *vs.* O'Brien, 111 N. Y., 1, 49; Brooklyn Central Co. *vs.* Brooklyn City Co., 32 Barb., 358; Adamson *vs.* Nassau Co., 89 Hun, 261; Metropolitan City Railway Co. *vs.* Chicago Co., 87 Ill., 317; Nash *vs.* Lowry, 37 Minn., 261; Springfield Co. *vs.* Springfield, 85 Mo., 674; State *vs.* Murphy, Supreme Court of Missouri, 31 S. W. Rep., 594; Asheville Co. *vs.* Asheville, 14 S. E. Rep., 316; Birmingham Co. *vs.* Co., 79 Ala., 465; Booth's Law of Street Railways, Secs. 8—10; Elliott's Law of Roads and Streets, 564.

In protecting these contract rights against impairment, the construction put by the courts of the state upon its statutes and constitutions, is not binding upon this court; its own judgment with reference thereto must necessarily control upon the question whether the case comes within the constitutional guaranty. (Wright *vs.* Nagle, 101 U. S., 791; Yick Wo *vs.* Hopkins, 118 U. S., 356; Douglas *vs.* Kentucky, 168

Points.

Conclusion. The decree should be reversed.

U. S., 488, 501; Central Trust Co. *vs.* Citizens' Co., 82 Fed. Rep., 1.)

Not only do the strict rules of law prohibit the City from impairing the obligation of this contract; it would also be grossly inequitable to allow the plaintiff in error to be deprived of a very substantial part of the consideration which led it to invest its money in Detroit. It appears that the City had solicited capitalists to come to its aid and meet the necessities of its citizens by constructing a system of street railways and that no one had been found willing to do so except the predecessors of the plaintiff in error (pp. 103, 104, 122-127). The success of the undertaking was evidently uncertain. But the burden of building many lines through sparsely populated portions of the City, which must be unprofitable for some time to come, was assumed by the grantee, in reliance upon the covenant of the city to give it, for a limited time, the prior right to extend its lines through other streets of the City when changed conditions should warrant the construction of additional lines of railway. So far as the question is material, the reasonableness of the provision regarding future roads is to be judged by conditions existing when that provision was made (Toledo etc. Co. *vs.* Jacksonville, 67 Ill., 37; Tiedeman on Police Power, Sec. 194; Dillon on Municipal Corporations, 4th Ed., § 327).

Accordingly, when the City adopted the ordinance, it entered into an irrevocable contract with the grantee therein designated in the terms of that ordinance. In making this contract the City had authority to prescribe the terms and conditions upon which the grantee might construct and operate its lines and railway. In so doing, the needs of the public at the time were doubtless consulted, and the minds of the parties met on the prescribed terms and conditions because full consideration was given to the circumstances then existing. Some of the streets thereafter to be occupied by the lines of the grantee were not then designated, for the reason that the Council could not then determine by the use of what streets the convenience and necessities of the citizens would best be served.

Points.

Conclusion. The decree should be reversed.

The provision for a future determination of the particular streets to be occupied, was for the benefit of the City, but the provision which gave the grantee the option to occupy such streets upon the notice prescribed, was for the protection of the grantee and was a grant for a good consideration, namely, the undertaking to construct and operate at once such portions of the proposed system of railways as the public needs then required.

With the growth of the City and the decrease in the cost of building street railways, those who took none of the early risks have asked the City to give them the right to construct additional lines of railway in disregard of the rights of the pioneer organization under its contract with the City. There is no suggestion of any fault upon the part of the plaintiff in error; no suggestion that the necessities of the public will not be fully served if the City complies with the terms of its agreement. The effort to repudiate the terms thereof is based upon nothing save the claim that the Council originally exceeded its authority. The effort of the City is to retain the consideration for the grant which was ample (City Railway Co. *vs.* Citizens' Railroad Co., 166 U. S., 557, 566), but to repudiate the obligation which it gave therefor. Such a position should merit and receive no greater consideration from a court of equity in the case of a municipal corporation than in that of any other party.

It is, therefore, respectfully submitted that the complainant and plaintiff in error was entitled to the relief prayed in the bill, and that the decree should be reversed.

David Wilcox,
Frank Sullivan Smith,
Of Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE DETROIT RAILWAY, and
THE CITY OF DETROIT.

In Error to the Supreme Court of the State of Michigan.

Brief of Henry M. Duffield for Plaintiff in Error.

STATEMENT OF CASE.

The jurisdiction of this Court over the case is settled by the decision in City Railway Company vs. Citizens' Street Railroad Company, 166 U. S., 557.

The facts in the case in detail are clearly stated in the brief of Mr. Donnelly.

The important question in the case is: Was the ordinance of the City of Detroit of November 24, 1862, establishing a system of street railways for the city, valid in

so far as it agreed to give to the Detroit City Railway the first right to build and operate such extensions and new routes as the Common Council might thereafter order?

The defendant the Detroit Railway built its street railway after express notice of the claims of complainant under this ordinance and while this suit was proceeding to enjoin them from so doing. The question, therefore, is in no way confused by any equities in favor of the defendant street railway.

In 1862 Detroit had a population of about 50,000 and no street railway. There was, however, a strong desire on the part of the people for a street railway system suiting the street plan of the city. The Common Council had offered in May, 1862, to H. K. Sanger and his associates, when organized into a corporation, the right of way for a street railway through the same streets again named in the ordinance of November 24, 1862.

In addition to streets named in the ordinance, it included such other streets and avenues in said city "as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit, and assented to in writing by said corporation." It did not, however, grant the exclusive right of way over these streets, and was not accepted by the grantees. Thereupon in August, 1862, by direction of the Common Council, the City Controller advertised for 30 days for proposals for building a street railway in the streets named and under the terms contained in the May ordinance. As a result of this advertisement the city adopted the ordinance of November 24, 1862, which is here in question.

This ordinance granted to one Bushnell and his associates, when organized into a street railway corporation, the exclusive right to construct and operate a street railway upon the streets named in it, and "through such

other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit and assented to in writing by said corporation." It provided, however, that if the corporation did not so assent within 30 days after the passage of the resolution ordering the formation of new routes, then the Common Council might give the privilege to any other company to build such route, and such company should have full right of crossing at their own cost and expense any tracks already laid.

It was amended December 27, 1862, and January 12, 1863, as to matters which are not material to the question here.

Bushnell and his associates thereupon organized the corporation of the Detroit City Railway, which accepted the ordinance and constructed and operated the street railways provided for therein.

The defendant railway company and the City of Detroit challenge the validity of this contract as beyond the power of the city upon two grounds:

First. Because it granted to the Detroit City Railway rights of way in streets which were not designated by name in the ordinance, but by its terms were to be determined in the future.

Second. Because the grant was in its terms exclusive.

The question, therefore, is one of construction and interpretation of the power of the city in respect of the subject matter of the contract, under the peculiar jurisprudence of Michigan.

Preliminary to the discussion of this question the following propositions are submitted in the confident belief that they are so well established upon reason and by authority as to need no extended argument:

1st. That the exclusive provisions in a contract of this nature are not in and of themselves invalid.

New Orleans Gas Light Co. vs. Louisiana, etc., Co., 115 U. S., 650.
New Orleans Water Works Co. vs. Rivers, Id. 674.
Louisville Gas Co. vs. Citizens' Gas Light Co., Id. 683.

2nd. That under the law of Michigan street railways —whether the motive power be animal or electricity— are but an improved mode of street use and are not an additional servitude which owners of abutting lands may restrain.

R. R. Co. vs. Heisel, 38 Mich., 62.
Grand Rapids Street Railway Cases, 48 Mich., 433.
People vs. Railway Co., 92 Mich., 522.
Detroit Citizens' St. Ry. Co. vs. Detroit, 12 C. C. A., 365, 372.

3d. That local self-government is peculiarly preserved and secured to the citizens of Michigan by the Constitution of the State, and the power of the State in respect of direct interference with purely local concerns of cities is materially limited.

Allor vs. Wayne Co., 43 Mich., 76-97.
People vs. Hurlbut, 24 Mich., 44.
Hubbard vs. Springwells, 25 Mich., 153.
People vs. Com. Council of Detroit, 29 Mich., 108.
Detroit Citizens' Street Ry. Co. vs. Detroit, 12 C. C. A., 365, 378-9.

4th. That in the interpretation of legislative provisions designed to confer power upon municipalities over purely local concerns, consideration must be given to this State policy as well as to the fact that the Legislature, in the interest of local government, ought to confer a wide discretion upon municipalities, being itself incompetent to legislate directly upon such concerns.

Detroit Citizens' St. Ry. vs. Detroit, ubi sup.

5th. That therefore when the State acts in the only way it can act, by conferring in general terms upon the municipality the powers necessary to the establishment of such public facilities of intra urban travel, limitations upon the discretion of the municipality in the exercise of that power ought to be plainly apparent before the courts will be justified in declaring their existence.

Detroit Citizens' St. Ry. Co. vs. Detroit, 12 C. C. A., 365-379.

Under these propositions we submit that the City of Detroit was vested with the power to grant such street rights as were requisite to provide its citizens with an adequate and suitable system of street railways.

I.

Recurring to the objections alleged against the validity of this contract ordinance of 1862, did the City of Detroit have power to enact the provision in section two?

Was its power strictly confined to giving a right of way over streets specifically enumerated in the ordinance, and upon which the street railway was to be built *in presenti?*

The general grounds of this objection will be discussed later in connection with the second objection, but some considerations growing out of the particular situation seem pertinent here.

The record clearly shows that in 1862 there was a pressing need for a system of street railways in Detroit.

The city and not the company determined the system and designated its routes. The wisdom of this plan is

apparent. The street plan of the city was peculiar. Two of its principal streets, Woodward avenue, running north from the river, and Jefferson avenue, running east and west, each extending entirely across the city, cross each other at right angles but a short distance from the river, which is the southerly boundary of the city. Three other avenues, Michigan, Grand River and Gratiot avenues, extend diagonally west, northwest and northeast respectively to the city limits. But in the center of the city all run into Woodward avenue, which is the main street of the city.

The business heart of the city in 1862 was on Woodward avenue, from about the Campus Martius, south to Jefferson avenue and the river.

A city thus laid out specially called for a system of street railways, each line of which could have equal terminal facilities along Woodward avenue to the heart of the city. It was obvious that as the city grew and extended its limits the residents on the portions of the principal avenues, Jefferson, Woodward, Grand River and Gratiot, included in the extensions, should have the privilege of direct and quick transportation for one fare and without change of cars to the heart of the city. This would be impracticable if different companies occupied these streets. Such diverse ownership would compel the citizen to pay more than one fare and delay and incommode him by change of cars.

New routes in the then limits of the city might become necessary, with increasing population, and in the interest of the citizens such routes should be determined with reference to and be made a part of the same system.

The ordinance therefore designated the streets which should comprise the system best suited to the city's then needs, and provided for "ordering the formation of new routes by resolution of the council," as the city's needs

should increase or change. The right to determine these routes was wholly with the city. They could so designate routes that the company must take streets which could for the time being only be operated at a loss in order to secure other streets which would then or very shortly thereafter be remunerative.

In case of non-acceptance by the company in thirty days from the passage of "the resolution of the council ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails at their own cost and expense."

The case, therefore, is clearly distinguishable from the cases of Jackson & C. R. R. Co. vs. Interstate R. Co., 24 Fed. R., 306; Mayor of Knoxville vs. Africa, 77 Fed. R., 503, and others in which cities had surrendered to street railway companies the right to construct and operate street railways upon such streets as they should at any time thereafter choose for themselves. The reasons stated in these decisions for holding such grants void have no application to the case at bar.

The objection to the power of the city in this respect is technical in the extreme. To enforce it practically excludes the city from making wise and prudent contracts. It compels the city to shut its eyes to its future growth; to bargain and contract in a matter so essential to convenience of its citizens, upon the assumption that it will never increase in territory; to make a contract many years to run, during which it is certain the city will largely extend its limits, but to refrain from making any adequate provisions for such extensions. A street railway corporation is created for a long period of years. A street railway system is planned to satisfy not alone present but future needs.

In Africa vs. Board of Mayor and Aldermen, 10 Fed. R., 729, it is said, p. 735, by Clark, J.:

"In respect to this it is only necessary to say briefly that no commercial railroad and street railroad of any considerable importance is ever determined upon except as a system or plan, and it is certain in many or most instances that if after a partial completion of the plan the right to go further could be withdrawn by repeal of the franchise, it would render the system so far as extended of little value and would operate widely as a destruction of property and rights in proportion to the progress of the work at the time of the withdrawal."

It is true that the decision in this case was overruled in Mayor, etc., vs. Knoxville, 77 Fed. R., 503, but it was not because of any denial of this doctrine.

The Circuit Court of Appeals held that the grant of right of way in the case was not a grant of a right of way for a definite system, but an absolute surrender by the city to the street railway company of all control over *all the streets* in the city. A single quotation from the opinion, p. 503, will demonstrate the inapplicability of this decision to the case at bar:

"To say that the grant constitutes a route or system is absurd. The grant covers every street, and if occupied would result in a railroad upon the four sides of every city square. The city would be covered by a line of railroad having the system of a checkerboard regardless of the public interest and in defiance of the public necessity. No community would for a moment tolerate such an unnecessary and harmful obstruction of its streets, and no company could possibly contemplate such a multiplication of parallel lines crossed at right angles at each cross street by another series of like parallel lines. The clear purpose of the ordinance was to enable the grantee to elect from time to time what streets it would

occupy and what new lines, or exeensions of old ones, its interests as a private corporation would justify. To delegate this power to a street railway company is wholly inadmissible, violates every principle of public policy and has no sanction in law. The provision of the statute which we have heretofore cited providing that "no one of the streets of said city shall be used by said company * * * until the consent of the city authorities has been first obtained and an ordinance shall have been passed prescribing the terms on which the same shall be done," is a clear implication that the city authorities shall know what streets the proposed railroad is to occupy and intelligently determine whether the public interests will be subserved thereby."

It is not necessary that all the lines of a street railway system should be built at once. The city should certainly have the discretion to prescribe that certain routes should be built immediately and that others should be built after the first are completed. Nor is it necessary for the street railway company to at once occupy and lay its tracks on every portion of its right of way in order to preserve the grant.

The following statement of the law in this respect from Elliott on Roads and Streets, p. 570, has been quoted with approval by the Federal and State Courts:

"While it is, as we believe, true that some act must be done vesting the inchoate right conferred by a general grant, still we do not regard it as essential that manual possession should be taken of all of the streets or roads embraced in the general grant or license. If the company having the prior right enters upon the work of constructing a system and with reasonable diligence and in good faith does actually construct a considerable part of the system, it ought not to lose its rights unless it has failed

to comply with a proper demand to complete the system or has unreasonably delayed its completion."

Undoubtedly the courts would have the power and it would be their duty to examine critically the particular ordinance which it was claimed created such a system. If it was a mere pretence of a system in order to give a street railway company unlawful control of public streets in the future, it would not be sustained. In this, as in all cases, a court of equity would "look through the sign to the thing signified" and adjudge acocrdingly.

Certainly it seems unreasonable to contend that a city in Michigan, granting a right of way on a street for a street railway, may not make provision therein for a right of way in the future over such portions of said street as from time to time during the life of the company may be taken into the limits of the city. The present case affords an instructive illustration.

Woodward avenue extends from the Detroit River to the northerly limits of the city. In 1862 it was less than two miles long; in 1898 it is four and 2-5 miles long. From the easterly to the westerly limits of the city Jefferson avenue (and Woodbridge street, which is a prolongation of it) was in 1862 three and 7-10 miles. In 1898 it is seven and 2-5 miles. The Michigan avenue line from Woodward avenue to the present city limits is three and 4-5 miles; in 1862 it was only one and 8-10 of a mile. From Woodward avenue on Grand River to the present city limits is three and 4-5 miles; in 1862 it was only one and 7-10 of a mile. Gratiot avenue line terminated in 1862 at the then city limits, which were two miles inside of the present city limits. The extensions on these routes are longer than the original lines.

If two street railway companies were operating on each of these streets, the citizen must pay two fares and change cars at least once before reaching the heart of the

city on each of the six streets. Certainly these fourteen miles or more of street railways are operated under the ordinance to the far greater accommodation, convenience and economy of the citizens than would be possible if the restrictions contended for by the defendant railway were enforced.

II.

It is claimed that because the Michigan statute does not use the word "exclusive," the city had no power to grant an exclusive right to the Detroit City Railway; that such power can only be granted by express words.

Before the decision here under review, this question was twice brought to the attention of the Supreme Court of Michigan in

Grand Rapids Street Railway Cases, 48 Mich., 433.
and
People vs. St. Railway Co., 92 Mich., 522.

They are not alluded to in the opinion of the Court here under review.

In the first case the Court, Campbell, J., assumed the city's power, but decided that the complainant had lost its right on the streets in question by failure to build after a demand by the city under the terms of the ordinance.

In the second case the Court put the question to one side as not involved in the case, because the grant was sufficient for the purposes of that case even if the exclusive provisions were held void.

It is not in this case necessary to discuss this question as a general proposition. The question here is whether under the Michigan law the City of Detroit had such power.

The statute of Michigan gave to this street railway corporation these franchises; the right to be a corporation; the right to construct and operate a street railway, and collect tolls thereon, and to acquire and hold in its corporate capacity the property necessary for that purpose.

This was all the statute gave. It was all the Legislature of the State could give.

As said in Detroit Citizens' St. Ry. Co. vs. Detroit, 12 C. C. A., 264-379:

"It is evident that the Legislature could not grant to any street railway company the right to construct and operate its road upon any particular street. It may provide for the incorporation of such companies and endow them with the franchises necessary. For the necessary street rights they must be referred to the only authority which can grant such privileges—the local government of the municipality in which it is proposed to operate such road."

This has been the unbroken legislative construction of the law. In the forty-eight years which have elapsed since the adoption of the Constitution of the State, the legislatures have never attempted to make such a grant. The statute did not purport to give—because it could not lawfully do so—any right of way either in the public streets or on private property. It simply created a corporation capable in law of building and operating a street railway and charging tolls thereon whenever that corporation should secure from the city or private persons the necessary right of way upon which to build its tracks and run its cars.

In respect of this right of way the power of the city was sole, plenary and absolute. It could grant it or refuse it, in whole or in part. The Legislature could not

compel it to do either. The city could surround and safeguard its grant with "such regulations" and "such terms and conditions" as it saw fit.

The statute creating the street railway corporation endowed it with the necessary faculties, but prohibited it from constructing a street railway through the streets of the City of Detroit "without the consent of the municipal authorities, and under such regulations and upon such terms and conditions as the (municipal) authorities might from time to time prescribe."

The illustration used by the United States Circuit Court of Appeals in Detroit Citizens' St. Ry. Co. vs. Detroit, 12 C. C. A., 365, 380, is equally apt here: "What the legislature meant by the "consent" it intended the municipality should grant if it saw fit, is illustrated by Sec. 10 of the Tram Railway Law. That section permitted such companies to enter upon and condemn under the State's right of eminent domain a right of way 100 feet in width, but limited this right by prohibiting the location of such road "through any orchard or garden without the consent of the owner thereof."

The same words used in the same connection must certainly have the same meaning unless the inherent nature of the subject matter compels a different interpretation. But there is nothing of the kind in this case. The ordinance in question did not surrender any of the police powers of the city.

The street railway company may be compelled to change the construction of their roadbeds to conform to changed and improved conditions of the street;

Detroit vs. Fort Wayne, etc., R. R. Co., 90 Mich., 646.

to remove the projecting ends of its ties when in the judgment of the Common Council they will injure by jarring a contemplated concrete pavement; *ibid.*

The Common Council has power to order (and it has compelled) the use by the company of a new and improved style of rail which lessens the obstruction of the tracks to other travel; to provide vestibules for its motormen; to properly warm, light and heat its cars for the comfort of passengers.

It can be compelled by subsequent ordinance to keep tickets, giving a reduced rate of fare, for sale on its cars.

Detroit vs. Ft. Wayne & B. I. R. R. Co., 95 Mich., 456.

It can be compelled to run its cars as often as the Common Council, in the fair exercise of its discretion, may deem necessary and reasonable.

People vs. Detroit Citizens' St. Ry., 74 N. W., No. 7.

In short, the right to regulate the construction and the use of the tracks of the company, and the equipment and operation of its cars, to conform to all the needs and convenience of the public, is still reserved to the city.

There is a slight reduction in ticket fares in the ordinance of the Detroit Railway; the cash fares are the same on both roads. But in the eleven hours of the least travel during the twenty-four its ticket fares are one and 1-24 of a cent less than the complainant's ticket fares. This, as is shown in Mr. Donnelly's brief, is largely, if not quite, compensated for in the reduction of taxes and the city's agreement to construct, repair, maintain and clean the Detroit Railway's roadbed.

The statement in the brief of the city counselor that during the life of the complainant's franchise there would be a total saving of $10,000,000.00 in fares, is ridiculously extravagant.

Counsel on the other side attach undue importance to the word exclusive as used in the ordinance.

It is obvious that the construction of a street railway track and the running of cars thereon in a street of ordinary width is largely exclusive in fact even where the right of way is not so made in terms.

Street railway tracks differ materially in this respect from gas pipes or telegraph or telephone lines. Different companies may lay gas pipes in the same streets without any permanent or even long continued interruption of public travel in the street. So several telegraph or telephone companies may string their wires overhead or through underground conduits with but temporary inconvenience to the public use of the street. But usually the occupation of a street by one street railway company physically excludes from that street the track of another street railway. And when the first company's right of way is for a double track, it does so necessarily; for the city cannot interfere with the rights of the public in the street by multiplying street railway tracks.

St. Ry. Companies' Case, 48 Mich., 433.
Railway Co. vs. Mills, 85 Mich., 634.
People vs. St. Ry. Co., 92 Mich., 522.

It is evident therefore that the objections to an exclusive grant for a street railway are more technical than real.

Much stress is laid by counsel upon the canons of interpretation of statutes which are found in the books. It is said that grants of this nature are to be construed strictly in favor of the public and against the corporations. As to this, we understand the rule applicable to this case to be that enunciated in

Oregon Ry Co. vs. Oregonian Ry. Co., 130 U. S., p. 26,

that as regards the extent of the grant the universal rule is "t h a t i n d o u b t f u l p o i n t s the construc-

tion shall be against the grantee and in favor of the government or general public."

But all rules of construction are framed only as means of arriving at the true intent of the act in question. The paramount consideration is that the intent of the Legislature shall govern.

This is clearly stated by Lurton, J., in Detroit Citizens' St. Ry. vs. Detroit, 12 C. C. A., 365, at p. 376 (construing these same laws):

"But the books abound in rules of construction. They all have one end in view, and that is to ascertain and declare the intent of the act under construction. Contrasting the rule which requires a strict construction of penal statutes with the rule requiring that the intent of the Legislature shall govern, Chief Justice Marshall, in U. S. vs. Wiltberger, 5 Wheat., 95, as to the rule of intent, said:

"'It is a modification of the ancient maxim and amounts to this: that though penal statutes are to be strictly construed they are not to be construed so as to defeat the obvious intention of the Legislature.'"

"In U. S. vs. Hartwell, 6 Wall., 395, the Court, in speaking of this strict rule of construction of certain classes of statutes, said of the rule that:

"Wherever invoked it comes attended with qualifications and other rules no less important. It is by the light which each contributes that the judgment of the Court is to be made up. The object in construing penal as well as other statutes is to ascertain the legislative intent. That constitutes the law. If the language be clear it is conclusive. There can be no construction where there is nothing to construe. The words must be narrowed to the exclusion of what the Legislature intended to embrace, but that intention must be gathered from the words, and they must be such as to leave no room for a

reasonable doubt upon the subject. It must not be defeated by a forced and over strict construction. The rule does not exclude the application of common sense to the terms made use of in the act in order to avoid an absurdity which the Legislature ought not to be presumed to have intended. * * * The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes in the fullest manner the policy and objects of the Legislature. The rule of strict construction is not violated by permitting the words of the statute to have their full meaning or the more extended of two meanings, as the wider popular, instead of the narrow technical, one; but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent."

In the case before us "that sense of the words which best harmonizes with the context and promotes in the fullest manner the policy and objects of the Legislature" is such power of consent as will fully and best enable the city to provide for its citizens a well planned system of street railways.

Construing these same laws the United States Circuit Court of Appeals for the Sixth Circuit (Mr. Justice Jackson and Lurton and Sage, JJ.) held, in Detroit Citizens' St. Ry. Co. vs. Detroit, 12 C. C. A., 365, at p. 382:

"We are thus led to conclude that these street railway acts directly confer upon the municipality of the State power to grant to street railway companies such an easement of way in the streets as is requisite for the purposes to be accomplished. That power is conferred without and express words of limitation. On the contrary, the 'terms and conditions' upon which the grant is to be made are left to the discretion of the local government."

The only easement of way requisite for the purposes to be accomplished is one which will authorize the adoption by the city of a proper street railway system adequate and suitable for future and growing needs as well as those immediately present. As has been shown, the City of Detroit, in the ordinance in question, wisely planned and adopted such a system of street railways, and in so doing acted wholly within its powers.

III.

Even if the exclusive privileges given by the ordinance are held void, the remainder of the ordinance would not necessarily be invalid.

This is expressly held by the Supreme Court of Michigan in

People vs. Street Ry. Co., 92 Mich., 522

If, therefore, the city had the power to adopt a system of street railways and provide for extensions and new routes thereof, but had not the power to give the exclusive use of the streets comprised therein, this complainant would still be entitled to the first right to build and operate the extensions and new routes in connection with and as part of the original system, and to that extent should be granted the relief prayed for in its bill of complaint.

I submit that upon the correct rules of construction applicable to this case, and upon every principle of fairness and good faith, the decision of the Supreme Court of the State of Michigan should be reversed and the complainant should be granted the relief prayed in its bill.

HENRY M. DUFFIELD,
Counsel for Plaintiff in Error.

No. 236.

Sup. Br. of Baker for P. E.

Filed May 9, 1898.

FILED
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JAMES H. McKEN

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error.

vs.

THE DETROIT RAILWAY and THE CITY OF DETROIT,
Defendants in Error.

No. 236.

SUPPLEMENTARY STATEMENT FOR PLAINTIFF IN ERROR.

An ordinance of the Common Council of the City of Detroit, approved November 24, 1862, was amended by an ordinance approved December 27, 1862, and by an ordinance approved January 12, 1863. The grantees named in the ordinance thereupon accepted it by organizing the "Detroit City Railway," and making the required deposit of $5,000.

Record, pp. 11-16.

An examination of sections 2, 5 and 6, of the ordinance as so amended and accepted, shows that street railway routes were specifically granted by it as follows:

FIRST ROUTE.

The whole length of Woodward avenue, from the Detroit River to the northerly limits of the city. A part of Woodward avenue north of the Grand Circus had been known as Witherell street, and therefore mention was made of that street.

SECOND ROUTE.

The whole length of Jefferson avenue, from the easterly limits of the city to the intersection of said avenue with Woodbridge street, near First street; thence along Woodbridge street to Third street; up Third street to Fort street, and on Fort street to the western limits of the city.

THIRD ROUTE.

The whole length of Gratiot avenue, from the intersection of said avenue with Randolph street to the easterly limits of the city; along State street to Woodward avenue, or along Randolph street and Monroe avenue to the Campus Martius and Woodward avenue.

FOURTH ROUTE.

The whole length of Grand River avenue, from Woodward avenue to the northwesterly limits of the city.

FIFTH ROUTE.

The whole length of Michigan avenue, from Woodward avenue to the westerly limits of the city.

SIXTH ROUTE.

The whole length of Brush street (or of Beaubien street), from Atwater street to the northerly limits of the city.

SERVICE REQUIRED TO CORNER OF JEFFERSON AND WOODWARD AVENUES.

In 1862, and for many years afterwards, the business center of the city was at these corners. This explains why it was expressly stipulated in the ordinance—

"That the railways on Grand River street, Gratiot street, and Michigan avenue shall each run into and connect with the Woodward avenue railways in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue." Sec. 2.

Record, p. 12.

Some idea of the relative importance of the several routes can be obtained from the stipulations as to the periods of time within which they should be built and completed.

WITHIN SIX MONTHS.

(1) The Woodward avenue line, as far north as Park lot 62, which is in the vicinity of Alexandrine avenue. This was only about half of that part of the avenue in the city.

(2) The Jefferson avenue, Woodbridge street, Third street, and Fort street line, from the eastern to the western limits of the city.

WITHIN TWO YEARS.

The Michigan avenue line from Woodward avenue to Thompson street, now Twelfth street.

WITHIN THREE YEARS.

The Gratiot avenue line, from Woodward avenue to the B. Chapoton farm, now McDougall avenue.

WHEN THE PUBLIC CONVENIENCE REQUIRES.

The clause or provision fixing the periods in which the different routes should be constructed concludes with these words:

"And the remainder thereof at such times *as the public convenience may require.*"

ORDINANCE OF AUGUST 19, 1863.

While the construction of the roads was in progress, and before the first six months had expired, the Common Council passed the ordinance approved August 19, 1863, which provides:

(1) That in stead and in lieu of the construction within the six months on Third and Fort streets, the company should construct its roads on Michigan avenue, from Woodward avenue to Fourth street, and on Gratiot avenue, from Woodward avenue to Russell street.

(2) That the company should complete its roads "on Fort street, Michigan avenue and Gratiot street, as provided by the aforesaid ordinances, by the first day of October, 1864, and a failure to complete the same by that time shall be regarded as a forfeiture of the route or routes not so completed."

(3) That the Jefferson avenue, Woodward avenue, Michigan avenue, and Gratiot street lines should each be considered one route; that all cars running north of Jefferson avenue should run to and from Jefferson avenue; and "that portion of Woodward avenue between Jefferson avenue and the routes intersecting Woodward avenue" should "be considered as making a portion of each of said routes respectively."

Record, pp. 16-17; 205-206.

ORDINANCE OF JANUARY 4, 1864.

This ordinance severed the proposed Fort street line from the Jefferson avenue line by cutting out their connection through Third street; and it authorized the construction of a line on Fort street from Woodward avenue to Stanton street (Seventeenth street), and west of Stanton street the road was to be constructed down Stanton street and along River street to the westerly limits of the city, instead of Fort street.

It was further provided that—

"The road and track of said railway from said westerly limits through said River Road, Stanton street, and Fort street, and from Fort street along Woodward avenue to Jefferson avenue, shall then form one route, along which said railway shall run its cars continuously, and on which it shall be entitled to receive one fare for each passenger."

Record, pp. 206-207.

We thus see that upon all the routes actually designated and fixed by the ordinance of November 24, 1862, as amended, the Common Council took especial pains to have the cars all run to the corner of Jefferson and Woodward avenues, and that the lines lying north of Jefferson avenue were all required to run into Woodward avenue at or near the Campus Martius, and from thence down Woodward avenue to Jefferson avenue.

The ordinance, as amended, provided for the establishment of a central street railway system, which was to occupy the principal streets of the city. Street railways were to be presently constructed along these streets a sufficient distance out from the business center of the city to accommodate the public, and they were to be thereafter extended further out along these streets as the public

convenience, from time to time, might require. Other routes, to be constructed in the future, would naturally run into the central system so established, and become a part of it, and with that object in view it was provided in section 2 of the ordinance, as amended, that the company, in addition to the routes specifically named, was also authorized to construct street railways—

"Through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the City of Detroit, and assented to in writing by said corporation organized as provided in section first of this ordinance: and provided the corporation does not assent in writing within thirty days after the passage of said resolution of the Council ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense."

The foregoing is the provision of the ordinance in question in this case. A careful analysis of it shows:

FIRST.

That it did not grant to the Detroit City Railway all the other streets of the city, or give the company any present rights therein, but left it to the discretion of the Common Council to subsequently, from time to time, determine what new routes of street railway should be constructed in the city. This left it in the power of the Common Council to refuse any or all new routes until the company should agree to such modifications of the ordinance with reference to either the old or the new routes as the city might desire.

SECOND.

That the city could not grant a new route to any other company unless it first offered the same on the terms and conditions of the ordinance of November 24, 1862, as amended, to the Detroit City Railway, and that company had refused within thirty days to accept it.

In considering these features of the ordinance we must keep in view the respective interests of the two parties to the contract and their natural attitude towards the construction of new routes. (1) It is plain that the city would frequently, if not uniformly, desire to have a new route constructed before there was patronage enough tributary to it to support it. (2) It is equally plain that the street railway company would not desire to construct a new route until it was satisfied that soon after it was constructed it would pay for its operation on the terms, conditions and rates of fare fixed by the ordinance, and that as soon as any new route would be remunerative, either as an independent route, or as a feeder to an old route, the company would desire to construct it.

So far as the company could be induced to build and operate new routes as additions to the central system, the public service would be more effectively improved than by the construction of new routes by new companies, and as the Detroit City Railway would be willing to build a new route as soon as it would be remunerative on the terms and rates of fare of the ordinance of November 24, 1862, the chance for extensions of the system by the construction of new routes was much greater with the old company than with any new one that might be organized.

In any case, where the city wanted a road prematurely constructed, that is, before it would pay, all the city had to do was to offer the route to the Detroit City Railway,

and that company was obliged to accept it, or lose it forever.

The City of Detroit was more interested in having the company accept a route than in rejecting it, for in that way it would obtain the better system and service. This is well illustrated by some of the routes granted to the Detroit Railway by the ordinance of December 4, 1894, which led to this controversy.

The Fourteenth street line of the Detroit Railway, between Michigan avenue and Grand River avenue, comes within a block of Michigan avenue, and the cars on that route should be run down Michigan avenue to the Campus Martius and Woodward avenue.

The Fourteenth street route north of Grand River should run down Grand River avenue to Woodward avenue, and down Woodward avenue to the Campus Martius and Jefferson avenue.

The Hastings and Beaubien street lines of the Detroit Railway come within a short distance of Gratiot avenue, and should run down Gratiot and Monroe avenues to the Campus Martius and Woodward avenue; and the Clinton, Sherman and Macomb street lines should do the same.

The Mt. Elliott avenue line of the Detroit Railway, north of Gratiot avenue, should also run down Gratiot avenue.

The Warren avenue, Bagg and Locust street lines, west of Grand River avenue, should run down Grand River avenue to Woodward avenue and the Campus Martius.

The great object of the city in making the grant was to secure a central and main street railway system and to provide for its continuous growth and enlargement. Section 2 was inserted for the benefit that would arise to the city therefrom, and as a protection to the capital to be invested in the central system. It was both wise and just, and the city had the full benefit of it without inter-

ruption from 1863 to 1894, a period of over thirty years. There is no good reason why it should now be permitted to repudiate the bargain that was so advantageous to it, and was one of the means by which the population of the city was increased from 50,000 to over 250,000 people.

COMMENTS ON MINTURN VS. LARUE. 23 HOW., 435.

In that case it appeared that the charter of 1852 of the town (now city) of Oakland conferred power on the Board of Trustees "to make such by-laws and ordinances as they may deem proper and necessary," among other things, "to lay out, make, open, widen, regulate, and keep in repair, all streets, roads, bridges, ferries," etc., "wharves, docks, piers, slips," etc., "and to authorize the construction of the same."

Held, that this provision did not authorize the Board of Trustees to grant an exclusive right of ferries between Oakland and San Francisco.

The Court, in an opinion by Mr. Justice Nelson, applied the rule of strict construction to this grant of power, but stated the following very clear and important distinction, which is the very essence of the point or proposition on which the plaintiff in error in the case at bar relies:

"It must be remembered that this is not the case where the Crown or Legislature had aliened to a municipal corporation its whole power to establish and regulate ferries within its limits, as may be found in some of the ancient charters of cities in England and in this country. In those cases the municipal body in respect to this legislative or public trust represents the sovereign power, and may make grants of ferry rights in as ample a manner as the sovereign.

"The error, we think, in the argument of the appellant is, in confounding this grant with these ancient charters

or those of a like charter. But on referring to them it will be seen that the form of the grant is very different and much more particular and comprehensive, leaving no doubt as to the extent of the power."

As a sample of the kind of cases referred to, the Court cites *Costar vs. Brush, 25 Wend., 628*, in which the opinion was delivered by Judge Nelson as Chief Justice of the State of New York, with the approval of his associates on the bench, Green C. Bronson and Esek Cowen.

The corporation of the City of New York, January 24, 1814, granted by a lease to Robert Fulton and William Cutting, the right to establish a ferry between Beekman slip in New York City and the old ferry at Brooklyn (now called the Fulton ferry) for twenty-five years from the first day of May ensuing the date of the lease. The city covenanted that it would not during the existence of the lease, grant establish or permit any other ferry between the City of New York and Brooklyn to the *southward* of the then ferry at Catherine slip.

The question whether the corporation of the City of New York in entering into the restrictive or exclusive clause in the lease did not exceed its power, was disposed of by the Court as follows:

"It is also insisted that the grant of the right of establishing ferries made to the corporation of the city was a franchise, to be exercised for the public good, and that any restriction consented to or imposed upon itself in the exercise of the power was illegal," etc.

"The short answer to all which is that the corporation of the city possessed the same power in respect to the establishment of ferries across the East River, that before belonged to the Crown or the Legislature, and the exclusive privileges, therefore, extended to the lessees of the Fulton ferry were within its municipal authority, and binding both upon the city and the public. See City

Charter, Sec. 15, and Kent's Notes, pp. 56-7, and 139-142 inclusive; 6 Wend., 85; 11 Peters, 540."

The charter provision referred to is to be found in the city charter granted in 1730 in the name of George II., by John Montgomerie as Captain General and Governor in Chief of the Province of New York. The provision in question reads as follows:

"And we do, for us, our heirs and successors, give, grant and confirm unto the Mayor, Aldermen and commonalty of the said City of New York and their successors forever, that the council of the said city, for the time being, or the major part of them (but no other person or persons whomsoever, without the consent, grant or license of the said Common Council of said city for the time being, or the major part of them), from time to time and all times hereafter shall and may have the sole, full and whole power and authority of settling, appointing, establishing, ordering and directing, and shall and may settle, appoint, establish, order and direct, such and so many ferries, around Manhattan's Island, alias New York Island, for the carrying and transporting people, horses, cattle, goods and chattels from the said Island of Manhattan to Nassau Island, and from thence back to Manhattan's, and also from said Island Manhattan to any of the opposite shores all around the same island, in such and so many places as the said Common Council or the major part of them shall think fit, who have hereby likewise full power to let, act, or otherwise dispose of, all or any of such ferries, to any person or persons whomsoever; and the rents, issues, profits, ferriages, fees, and other advantages arising and occurring from all and every such ferries; we do hereby fully and freely, for us, our heirs and successors, give and grant unto the Mayor, Aldermen and commonalty of the City of New York aforesaid, and to their successors forever, to have, take hold and enjoy the same, to their own

use, without being accountable to us, our heirs or successors for the same or any part thereof."

The charter of 1730 recites in full the prior charter granted in the name of James II. by Governor Thomas Dongan, in 1686, and also the grant relative to ferries made by Anne in 1708.

Charter of New York, and Kent's Notes, pp. 4-26.

The charter of 1686, in its preamble, states that "the City of New York is an ancient city," etc., and that the citizens and inhabitants of said city "have established and settled one ferry from said City of New York to Long Island for the accommodation and conveniency of passengers, the said citizens and travelers."

This charter confers "full power, license and authority to the said Mayor, Aldermen and commonalty, and their successors forever, to establish, appoint, order and direct the establishing, making, laying out, ordering, amending and repairing of all streets, lanes, alleys, highways, water courses, ferry and bridges in and throughout the said City of New York and Manhattan's Island aforesaid, necessary, needful and convenient for the inhabitants of said city and Manhattan's Island aforesaid, and for all travelers and passengers there."

Id., pp. 3-4, 6-7.

The charter of 1730 contains a grant by the Crown to the city of "the ferry and ferries on both sides of the East River, and all other ferries now and hereafter to be erected and established all around the Island of Manhattan's, and the management and rule of, and all fees, ferriages and perquisites of the same or any part thereof, belonging or to belong; and also the ferry houses on Nassau Island, with the barns, stables, pens or pounds and lot of ground thereto belonging," etc., "and to make laws and

rules for the governing and well ordering of all ferries now erected or established or hereafter to be erected or established around the said Island Manhattan's."

Id., pp. 84-85.

Chancellor Kent, in his notes, expresses the opinion that the grant of the right to establish other ferries and to appropriate the profits was a grant of property and not a grant of sovereign legislative power of a public legislative character liable to be recalled at the pleasure of the Legislature.

Id., pp. 140-141.

The charter of 1730 was approved by the Attorney General and granted by the Governor, January 15, 1730, but it was confirmed by an act of the Governor, Council and General Assembly of the Colony of New York, October 14, 1732. It remained in force without amendment until 1830.

The foregoing matter was used by the undersigned in his oral argument.

It is printed for the convenience of the Court in examining the cases of Minturn vs. Larue, and Costar vs. Brush.

FRED A. BAKER,
Counsel for Plaintiff in Error.

No. 236.

FILED
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JAMES H. BROKEN

Brief of Flowers for D. C.

No. 236. October Term, 1897.

Filed Feb. 14, 1898.

In the Supreme Court of the United States.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE CITY OF DETROIT, and the DETROIT RAILWAY,
Defendants in Error.

BRIEF FOR THE DEFENDANT THE CITY OF DETROIT.

CHARLES FLOWERS,
Counsel for the City of Detroit.

DETROIT:
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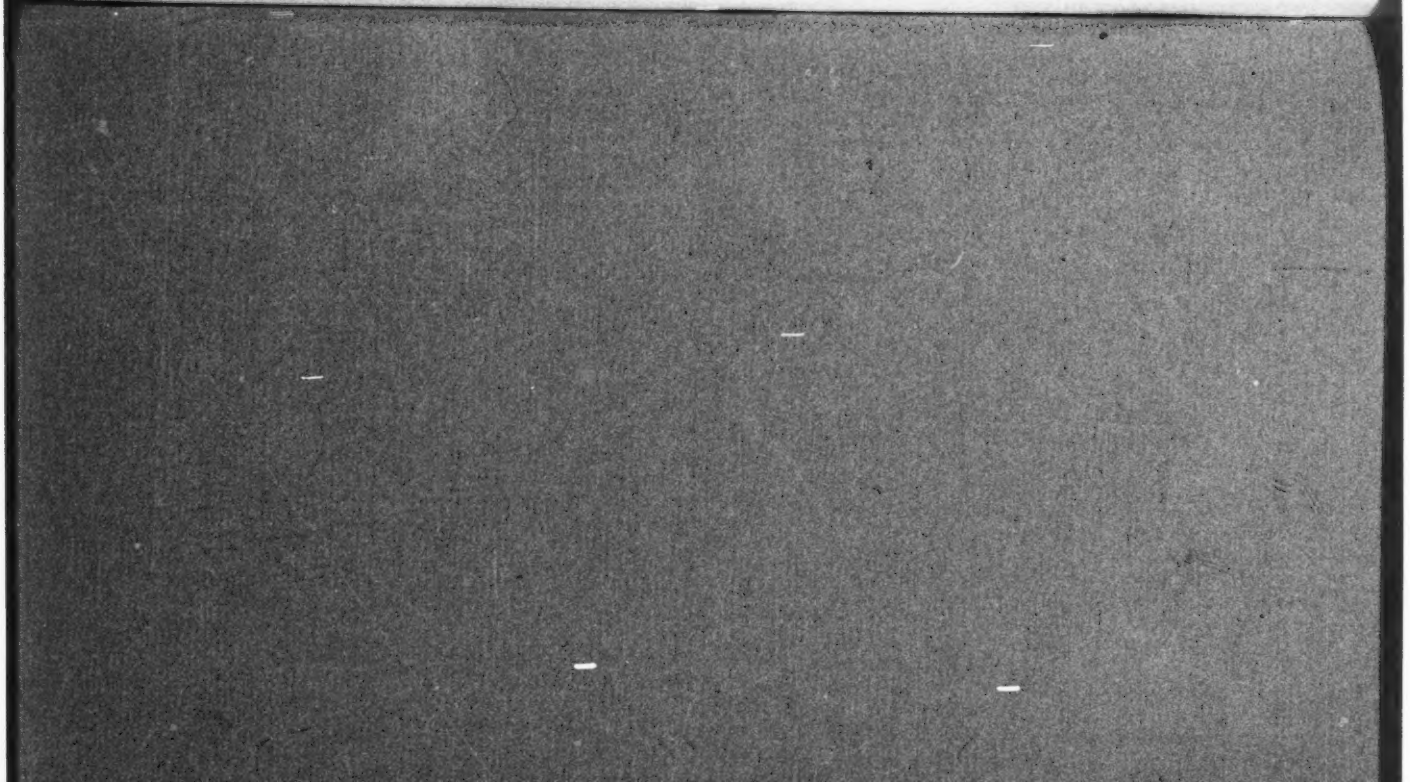

In the Supreme Court of the United States.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,
vs.
THE CITY OF DETROIT, and the DETROIT RAILWAY,
Defendants in Error.

BRIEF FOR THE CITY OF DETROIT.

This is an action brought by the Detroit Citizens' Street Railway Company against the Detroit Railway for the purpose of annulling the franchise of the Detroit Railway, granted December 4th, 1894, upon the ground that at the time said franchise was granted, complainant had the exclusive right under a franchise granted to its predecessors February 24th, 1862, to construct and operate lines of street railway upon all the streets of the City of Detroit.

The City of Detroit was made a party to the suit, and is deeply interested in the controversy.

The present population of the City of Detroit is about 300,000. The Citizens' Company operates about one hundred miles of railway lines, occupying the principal business and residence streets and avenues, under a franchise which entitles it to charge five cents for each ride, except for one hour in the morning and an hour in the evening, when it is compelled to sell eight tickets for twenty-five cents. The ordinance does not require the

company to give transfers, except to a very limited extent.

The Detroit Railway owns and operates about sixty miles of railway lines, mostly upon residence streets, which traverse portions of the city which previous to the granting of its franchise, had little or no railway accommodations. It has been estimated that about forty per cent. of the people of the city have access to its lines. The rates of fare which the ordinance requires, are eight tickets for twenty-five cents from 5:30 a. m. to 8 p. m., and six tickets for twenty-five cents during the night, with free transfers upon all of its lines. Basing the annual saving upon the number of passengers carried, as shown by the testimony in this case, it cannot be less than $100,000 per year. Taking into consideration the natural increase of population, the total saving during the life of the franchise will be not less than $10,000,000. To this extent the building of the competing lines of the Detroit Railway has benefited the people of Detroit, and it may therefore well be said that they are deeply interested in the outcome of this controversy.

The original franchise under which the Citizens' Company operates its lines was granted February 24th, 1862, and in the ordinance the grantees were:

"Authorized to construct and operate railways as herein provided through Woodward, Jefferson and Michigan avenue, and through Gratiot and Grand River streets, and from Jefferson avenue through Woodbridge street to Seventh street, and up Seventh street to Fort street, and through Fort street to the western limits of the city, *and through such other streets and avenues in said city as may from time to time be fixed and determined by a vote of the Common Council of the City of Detroit and assented to in writing by said corporation organized as provided in Section 1 of this ordinance.*"

The proposition of the complainant, broadly stated, is that by the ordinance of 1862 the original grantees, and their successor, the Citizens' Company, obtained the exclusive right for all time to come, to operate street railways in the City of Detroit.

They claim that they not only procured such exclusive right to operate street railways upon all the streets which were then laid out within the corporate limits of the city, but upon all streets which might thereafter be laid out, as well as upon all streets which might be established in all additions to the city which might from time to time be made.

More broadly stated, the claim is that the control of this corporation should extend over the boundaries of the City of Detroit as then existing, and also over the townships of Hamtramck, Springwells and Greenfield, portions of which have since that time become a part of the City of Detroit.

More broadly still, the position of the complainant is that by the original ordinance a monopoly was created, by which the possibility of competition should be forever cut off, or made so uncertain as to be an impossibility.

The only questions to be considered are:

First. Had the City of Detroit inherent and original power, without authority conferred upon it by the Legislature, to grant an exclusive privilege to any railway company to own and operate street railways in the city.

Second. If it had no such original and inherent power, has such power been conferred upon it by the Legislature of the State.

As the second proposition is, in my opinion, of more importance, it will be first discussed.

I.

To answer this question in the negative, a reading of the act of the Legislature under which the franchise of February 24th, 1862, was granted, will be necessary.

The company securing the right to operate under the franchise of 1862, was organized under what is called "the train railway act." This act was passed in 1855, and gave no authority for the organization of street railway companies. On February 2d, 1861, about a year before the franchise in question was granted, the act was amended. This amendment is found on page 11 of the Public Acts of Michigan of 1861, and as it is short, I will quote it in full:

"Section 1. The People of the State of Michigan enact: That the act entitled 'An act to provide for the construction of train railways,' approved February 13th, one thousand eight hundred and fifty-five, be amended by adding two new sections thereto, to be numbered thirty-three and thirty-four.

"Sec. 33. It shall be competent for parties organizing companies under this act to construct and operate railways in and through the streets of any town or city in this State.

"Sec. 34. All companies formed for such purposes shall have the exclusive right to use the same: Provided, however, that no such company shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of said town or city; and under such regula-

tions and upon such terms and conditions as said authorities may from time to time prescribe."

This was the only authority which then existed for the organization of street railway companies, and if the City of Detroit, in February, 1862, had the power derived from the Legislature to grant to any street railway the exclusive rights and privileges for which the complainant contends, that power was derived from Section 34 as I have quoted it, and from no other source.

This section was amended in 1867 so as to read as follows:

"Sec. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them: Provided, That no such company or corporation shall be authorized to *construct a railway* under this act through the streets of any town or city without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe; Provided further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, *maintaining and operating such railway in the street in such consent or grant named*, pursuant to the terms thereof."

The amendment changes the first sentence of the section so as to make it better understood, and adds a proviso at the end of the section.

The original section 34, read in connection with section 33, simply means that railway companies organized under this act shall have the exclusive right to construct

and operate their own railways. The language being indefinite, the amendment of 1867 made it clear. That is to say: "All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railway constructed, owned or held by them." And in order to secure this right, they could not construct a railway through the streets of any town or city without the consent of the municipal authorities of such town or city, *and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe.*

The language of the section gives the company receiving the grant the exclusive right to use and operate its own railways; that is, that no other company shall have the right to use its railway or run its cars over its tracks.

There being no limitation in this section upon the power of the municipal authorities of the City of Detroit to make such regulations and prescribe such terms and conditions as they might see fit, and evidently for the purpose of protecting the railway companies, in 1867, five years after the grant in question, the proviso was added, which for emphasis I here repeat:

"Provided further, That after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway *in the street in such consent or grant named*, pursuant to the terms thereof."

That is, after the municipal authorities have granted to a railway company the exclusive right to operate its own railway in the streets named in the grant, such authorities shall make no regulations or conditions gov-

erning the operation of the road whereby such rights in the streets named shall be destroyed or unreasonably impaired.

In order to comply with the conditions of Section 34, the ordinance must designate the streets upon which the company may operate.

The claim of the complainant is that the original ordinance of 1862 gave the right to operate a railway upon all the streets of Detroit, and that the grant of the right to the Detroit Railway to construct tracks upon certain streets "destroyed and unreasonably impaired" the rights and franchises of the complainant.

A closer examination of Section 34 will disclose the fact that the proviso contained in the last clause of the section is a proviso that has two purposes: 1st, That the municipal authorities shall make no conditions or regulations whereby the rights granted shall be destroyed or unreasonably impaired; and 2d, That such company shall not be deprived of the right to construct, maintain and operate such railway *in the street in such consent named.*

The regulations and conditions referred to are regulations and conditions which must apply to the operation of the road; and not only shall no such regulations and conditions be from time to time made by the municipal authorities, but such municipal authorities shall not deprive the company or corporation of the right to construct, maintain and operate such railway in the streets named in the grant, or in the manner and according to the terms of the grant.

The power which the Legislature conferred upon the Council, then, was limited by the provisions of Section 34, herein quoted; and that power simply gave the Council the right to make an agreement with a railway company

to operate street cars upon certain streets named in the contract or license.

The question propounded is fully answered in the negative: No power has been conferred upon the City of Detroit by the Legislature of the State to grant an exclusive privilege to any company to own and operate street railways in that city.

This was decided by Judge Frazer, of the Circuit Court for the County of Wayne, denying the relief prayed for by complainant.

Record, p. 464.

The Circuit Judge says:

"I am of the opinion that the Constitution of the State does not give to the City of Detroit any such power, and that there can be no such power exercised by the municipality unless conferred by the Legislature. The rights claimed to have been granted to the complainant by the terms of the ordinance of February 24th, 1862, in my opinion would be of no force and effect unless the authority to grant the same had been conferred upon the Common Council by some act of the Legislature. No such act has been shown and therefore it follows that the ordinance in this respect is void and of no effect."

But it may be said that although special authority had not been conferred by Section 34 of the train railway act, such authority may have been conferred by the charter of the city.

The charter which was in force in 1862 was the charter of 1857, being act No. 55 of the Public Acts of 1857.

Section 22 of that charter enumerates the powers which the Common Council shall have "within the limits and jurisdiction of the corporation;" and the thirteenth subdivision of said section is as follows:

"To clean the highways, streets, avenues, lanes, alleys, public grounds and squares, crosswalks and sidewalks, in said city, of filth, mud and other substances; to prohibit and prevent the incumbering thereof with boxes, signs, posts and all other materials or things whatsoever, and to remove the same therefrom; to prevent the exhibition of signs on canvas, or otherwise, in and upon any vehicle, standing or traveling upon the streets of said city; to control, prescribe and regulate the mode of constructing and suspending awnings, and the exhibition and suspension of signs therein; to compel the occupants of lots to clear the sidewalks in front of and adjacent thereto, of snow, ice, dirt, mud, boxes and every incumbrance or obstruction thereon; *to control, prescribe and regulate the manner in which the highways, streets, avenues, lanes, alleys, public grounds and spaces within said city shall be used and enjoyed;* to direct and regulate the planting and to provide for the preservation of ornamental trees therein; to provide for and regulate the lighting of the same, and the erection of lamps and lamp posts therein; to prohibit and prevent racing, and fast or dangerous driving or riding therein; to prohibit and prevent the flying of kites, and all practices, amusements and doings therein having a tendency to frighten teams and horses, or dangerous to life or property; to remove or cause to be removed all walls and other structures that may be liable to fall therein, or otherwise, so as to endanger life or property."

It will be seen that the general power over streets is defined by the words "*to control, prescribe and regulate the manner in which the highways, streets, avenues, lanes, alleys, public grounds and spaces within said city shall be used and enjoyed.*"

This provision is the ordinary provision contained in city charters in reference to streets and public places. The "control" referred to is a continuing control, and must be exercised from day to day. The "regulation" is

a continuing regulation or supervision. The streets, at the time this charter was adopted were for a public use and a public enjoyment.

This was the opinion of those interested in the building of street railways when they secured the amendment to the train railway act, by which power was conferred upon the municipal authorities to permit the use of the streets for that purpose.

The opinion of Justice Jackson, in the case of the Grand Rapids Electric Light & Power Co. vs. Grand Rapids Edison Electric Light & Fuel Co., 33 Fed. Rep., 659, can well be considered at this point as bearing upon the powers conferred by charter to a municipality in Michigan.

On page 663 of the opinion the learned justice quotes from the charter of Grand Rapids. The thirty-fifth section of the charter is analogous to the provision of the Detroit charter of 1857 which I have quoted, and contains these words:

"To control, prescribe and regulate the manner in which highways, streets, avenues, lanes, alleys, public grounds and spaces within said city shall be used."

The masterly opinion of Justice Jackson, a logical examination not only of the express, but of the implied powers which our opponents imagine exist in the local authorities of Michigan cities to create an exclusive privilege, leaves nothing to be said upon the questions involved in this case.

The City of Grand Rapids in 1880 gave the complainants the exclusive right to erect poles and string wires in that city for fifteen years. In 1887 the city gave defendants the same privilege, but not exclusively.

I will be pardoned for quoting from the opinion, on page 670:

"To confer *exclusive* rights and privileges, either in the

streets of a city or in the public highways, *necessarily involves the assertion and exercise of exclusive powers and control over the same.* Nothing short of the *whole sovereign power* of the state can confer exclusive rights and privileges in public streets, dedicated or acquired for *public* use, and which are held in trust for the *public at large.* This brings us directly up to the inquiry whether the Legislature of Michigan has delegated to the City of Grand Rapids the state's sovereign power and control over the streets of that municipality. If the charter powers of the city have invested it or its common council with the *whole sovereign* power and exclusive control over the streets within its limits, it might lawfully confer upon the complainant the exclusive right of user, which the ordinance of 1880 undertook to grant. If, however, the city or its common council possessed no such exclusive power and control, then the grant which it attempted to make to complainant was '*ultra vires*,' and therefore void, so far as it purports to confer exclusive privileges in or over the streets of the city."

No authority having been given in direct terms, can it be claimed that such power was given to the city by implication?

Before examining the question of whether any such implied power is contained in Section 34, before quoted, let us for a moment call to mind the well-known rule acknowledged by all courts and law writers, that nothing is to be taken by intendment in construing a legislative grant of power.

As was said by the Supreme Court of Pennsylvania, in Railroad vs. Canal Commissioners, 21 Pa. St., 22:

"When a state means to clothe a corporate body with a portion of her own sovereignty and to disarm herself to that extent of the power that belongs to her, *it is so easy to say so, that we will never believe it to be meant when it is not said.* In the construction of a charter, to be in doubt, is to be resolved; and every resolution which springs from doubt is against the corporation."

But laying aside that rule for a moment, can it be even suggested that it was the intent of the Legislature by Section 34 to confer upon the City of Detroit the power to grant an exclusive right to any company in any streets not named in the grant, or even to give to any company an exclusive option or exclusive privilege which the company might exercise in the future at its own will?

I desire in this connection to ask the attention of the Court to the case of Wright vs. Nagle, 101 U. S., 791.

The case is cited by complainant's counsel as authority for the jurisdiction of this Court to review the judgment of the Supreme Court of Michigan. We accept it for authority for more than complainant claims.

In that case the inferior court granted to Miller, his heirs and assigns forever, the exclusive right of operating ferries across the Etowah river at Rome, Georgia. The right was granted in 1851. In 1872 the commissioners of roads authorized Nagle to erect and maintain a toll bridge over the same river, within the limits of the original grant.

Wright became the successor of Miller, and asked that the grant to Nagle, being repugnant to the Constitution of the United States, be annulled and declared void.

The power given by the Legislature of Georgia to the inferior courts of the several counties to establish bridges and ferries was so clear that there was some reason for

the argument that the right to grant exclusive privileges had been intended.

The superior court decided that the inferior court had no power to grant Miller any such exclusive right, and the bill was dismissed. This decision was affirmed by the Supreme Court of the State, and an appeal was taken to the Supreme Court of the United States.

The principles involved in that case and the present one are so analogous that I quote from the opinion of Chief Justice Waite, page 796.

After referring to the statutes by which it was claimed authority was given to the inferior court to make the contract in question, the Chief Justice said:

"It is conceded that these statutes contain all the authority the inferior court of Floyd county had to make the contract in question. Exclusive rights to public franchises are not favored. If granted, they will be protected, but they will never be presumed. Every statute which takes away from a legislature its power will always be construed most strongly in favor of the State. These are elementary principles. The question here is whether the Legislature of Georgia conferred on the inferior courts of its several counties the power of contracting away the right of the State to establish such ferries and bridges in a particular locality as the ever-changing wants of the public should in the progress of time require. In our opinion it did not. It gave these courts the right to *establish* ferries or bridges, but not to tie the hands of the public in respect to its future necessities. *The right to establish one bridge and fix its rate of toll does not imply a power to bind the State or its instrumentalities not to establish another in case of necessity.*"

As bearing upon the intention of the Legislature to grant to the Common Council of Detroit the power to confer exclusive privileges, let us examine the charters of the city previous to 1857.

The only provision which I have been able to find which gives the municipal authorities of the city power to confer an exclusive right or privilege, is found on page 20 of the Revised Charter and Ordinances of 1855.

This appears to have been a provision contained in charters previous to this date.

Among other powers conferred upon the Common Council by these early charters is the following:

"Relative to the supplying of the said City of Detroit with pure and wholesome water, by contract or otherwise, *and to grant such exclusive right to any person or persons willing to contract for supplying water as aforesaid.*"

This provision, however, was repealed by an act of February 14, 1853, when the Board of Water Commissioners was created.

This reference is suggestive. It shows that the question of exclusive rights was considered by the Legislature, and the power conferred only in this single instance. It was a power conferred for the benefit of the whole people of the city, and directly affected the life and health of every man, woman and child. Whether the full power given was ever exercised, I cannot say, but in 1853 the Legislature took away from the City of Detroit the authority which had been conferred upon it, and lodged it in a board created expressly for that purpose, and clothed

said board with power to construct water works and issue bonds and collect water rates.

It appears that the sovereign power of the State, from 1853 to the present time, did not consider that it had abdicated its authority and control over public highways of the State, when those highways were embraced within the corporate limits of a city.

It will thus be seen, from an examination of all the acts and charters in relation to the City of Detroit, that no power was ever conferred upon the municipality by the Legislature to grant the exclusive privilege which the complainant claims.

This was the conclusion reached by the Supreme Court of Michigan in this case. I quote from the opinion of Justice Montgomery, at page 470 of the record:

"It is apparent from the reading of the statute that there was no express or direct authority conferred in terms upon the Common Council to grant an exclusive privilege to occupy the streets of the city for street railway purposes."

I understand that it is the rule of this court to follow the decisions of the Supreme Courts of the States, in their construction of state statutes.

II.

It is claimed, however, by the complainant, that the City of Detroit had the sovereign power, original and inherent, as a municipality of Michigan, to grant the exclusive right contended for.

The contention is that the sovereign power of the State of Michigan over the public highways of the State has been cut up into small pieces and sown broadcast over the State, so that in each township, town and city a new sovereignty has taken root and grown up, independent, arbitrary and omnipotent.

If we read the statutes and charters and decisions of the State aright, this doctrine has been a kind of sleeping beauty. Legislatures have met and adjourned, statutes and charters controlling, limiting, defining, enlarging and narrowing municipal powers have been passed by the hundreds, and none of the Legislatures for the past fifty years have imagined that they were interfering with the rights or prerogatives of the little sovereigns.

The courts of the state, ignorant of the existence of this hidden and guarded sleeper, from term to term and from year to year have continued to render judgments and pronounce decrees contrary to such a doctrine.

For the purpose of sustaining this remarkable contention, announced for the first time in this case as an inducement to obtain a decree in favor of a monopoly, the learned counsel has quoted portions of three sections of the Constitution of the State.

Let us examine those sections in the order in which they are quoted on page 25 of complainant's brief.

"The State shall not be a party to or interested in any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure and granting to the State of land or other property."

Therefore, according to the reasoning of counsel, it was not necessary for the Legislature to pass acts regulating the manner in which street railways could acquire rights to occupy the streets of a city.

"There shall be elected annually, on the first Monday in April in each township, one commissioner of highways and one overseer of highways in each district."

Therefore the Common Council of the City of Detroit could give to John Brown, his heirs and assigns forever, the right to run railway cars through all the streets of the city.

"The Legislature shall not revoke or alter any road laid out by the commissioner of highways, or any street in any city or village or in any recorded town plat."

Therefore, the Common Council of the City of Detroit, having granted to John Brown and his assigns a license in 1862, for thirty years, to operate cars upon certain streets named in the license, it will not be competent for another Common Council, in 1894, thirty-two years after the first license, to grant to any other parties the right to run cars upon other streets, not in existence at the time the first license was granted.

The cases which the counsel for complainant cite in their brief in support of the doctrine of local control, are Hubbard vs. Springwells, 23 Mich., 153; Davis vs. Supervisors, 89 Mich., 295; People vs. Hurlbut, 24 Mich., 44; Park Commissioners vs. Common Council, 28 Mich., 228; Atty. Gen. vs. Common Council, 29 Mich., 108.

The same cases were referred to in complainant's brief in the Supreme Court of Michigan, and were cited by Justice Montgomery in his opinion, and were shown by him to be clearly inapplicable to the case at bar. For an analysis of them I refer to the opinion of the learned judge, found on pages 472 and 473 of the Record.

No stronger point can be made by me than to quote the same language quoted by Justice Montgomery from the opinion of Justice Cooley, in Park Commissioners vs. Common Council, 28 Mich., 239.

After stating that the opinion in People vs. Hurlbut, had been misapprehended, Judge Cooley said:

"We intended in that case to concede most fully that the State must determine for each of its municipal corporations the powers it should exercise and the capacities it should possess, and that it must also decide what restrictions must be placed upon these, as well to prevent clashing of action and interest in the State as to protect individual corporators against injustice and oppression at the hands of the local majority; and what we said in that case we here repeat, that while it is a fundamental principle in this State recognized and perpetuated by express provisions of the constitution that the people of every hamlet, town and city of the State are entitled to the benefits of local self-government, the constitution has not pointed out the precise extent of local powers and capacities, but has left them to be determined in each case by the legislative authority of the State from considerations of general policy, as well as those which pertain

to the local benefit and local desires; and in conferring those powers it is not to be disputed that the Legislature may give extensive capacity to acquire and hold property for local purposes or it may confine authority within the narrow bounds, and what it thus confers it may enlarge, restrict or take away at pleasure."

In their eagerness to discover in the Constitution of Michigan a few phrases which a brilliant fancy might dream to have some cabalistic meaning, counsel for complainant have ignored Article IV., Section 38, of the Constitution, which reads:

"The Legislature may confer upon organized townships, corporate cities and villages and upon boards of supervisors of the several counties, such powers of a local legislative and administrative character as they may deem proper."

As stated by Justice Montgomery, "The limitations upon this broad power to confer or withhold authority are that the Legislature may not withhold authority from the local authorities and confer it upon an outside agency, and under the provisions of Article IV., Section 23, it may not vacate or alter any road laid out by the commissioner or local authorities."

It must follow, as decided by the courts of Michigan, that:

"The power of a municipality to grant an easement in a street to a street railway company, is not inherent, but is derived from the Legislature."

It must therefore follow that the alleged contract or option under which complainant claims such extraordinary rights and special privileges, was void.

CHAS. FLOWERS,
For the City of Detroit.

Supreme Court of the United States

October Term, 1898.

No. [illegible]

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,

Plaintiff in Error

against

THE DETROIT RAILWAY and THE CITY OF DETROIT

ADDITIONAL BRIEF FOR THE DEFENDANT THE CITY OF DETROIT.

PHILIP A. ROLLINS,
JOSEPH H. CHOATE,
Of Counsel.

C. A. Montgomery, Printer and Copper Plating, N. Y.

In the Supreme Court of the United States.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,

AGAINST

THE DETROIT RAILWAY and THE CITY OF DETROIT,
Defendants in Error.

ADDITIONAL BRIEF FOR THE DEFENDANT THE CITY OF DETROIT.

Statement of the Case.

On December 4th, 1894, the Common Council of the City of Detroit passed an ordinance authorizing the defendant the Detroit Railway to lay tracks and operate railways through certain streets in that city.

On January 14th, 1895, the complainant, who in this Court is the plaintiff in error, filed a bill in equity on the chancery side of the Michigan Circuit Court for the County of Wayne praying that the City of Detroit and the defendant railway company might be enjoined from executing or proceeding under the ordinance just mentioned.

The complainant is the successor to the Detroit City Railway Company, and as such is the holder of whatever rights were vested in that company by virtue of an ordinance of the Common Council of Detroit, approved November 24th, 1862. And it contends that by the terms of that ordinance it holds such exclusive right to build street railways in the City of Detroit as to preclude the defendant

railway from operating, and the defendant city from granting to it any rights to operate, street railways within the city limits.

This ordinance of 1862 will be found on page 12 and following of the printed record. By its second section the grantees are exclusively authorized to construct and operate railways through certain named streets and avenues, "and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of the said City of Detroit and assented to in writing by said corporation organized as provided in Section first of this ordinance; and provided the corporation does not assent in writing within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route."

By the twentieth section of the ordinance the powers and privileges conferred by the ordinance, were limited to a period of thirty years from the date of its passage, but by a further ordinance, approved November 14th, 1879, found at page 19 of the printed record, were extended for a period of thirty years from the latter date.

The Circuit Court dismissed complainant's bill, and on appeal, its decree was unanimously affirmed by the Supreme Court of Michigan. The case was then removed to this Court by writ of error.

None of the streets or avenues through which the defendant The Detroit Railway was authorized to construct its road by the ordinance of 1894 are named in the ordinance of 1862. It is, therefore, clear that the appellant cannot secure a reversal of the decree below unless it can establish:

FIRST. That the ordinance of 1862 conferred upon its predecessor the exclusive right to construct railroads in all the streets of the City of Detroit; and

SECOND. That the Common Council of the City of Detroit had legal authority to enact an ordinance giving such exclusive right to the Detroit City Railway Company.

The Courts below did not consider at length the question as to what interpretation should be given to the ordinance of 1862, but based their decisions on the ground that even if the construction put upon the ordinance by the complainant were correct, the Com-

mon Council of the City of Detroit had no lawful authority to grant such exclusive privilege under the laws of the State of Michigan.

ARGUMENT.

I.

The ordinance of 1862, if it were construed to grant to the Detroit City Railway the exclusive right to construct and operate street railroads in all the streets of the city, would be void to that extent for the reason that the City of Detroit had no power to confer any such exclusive right.

The city has no proprietary rights in the streets. Its power over them is a legislative power held in trust for the benefit of the public. It is a continuing power to be exercised from time to time as the public interests may require, and except in so far as the city is specially authorized by the Legislature, the city is impotent to part with, diminish or limit this power by contract, or grant, or in any other way. Any contract attempted to be made having such effect is void. The power remains in the city, to be exercised in the same manner and to the same extent as if such contract had not been attempted.

These propositions are so thoroughly established that it seems needless to cite authority in their support.

The complainant recognizing this and being confessedly unable to find any statute passed by the Legislature of Michigan conferring such authority upon the Common Council of the City of Detroit, asserts that the authority of the city to grant rights in the streets to street railway companies is derived from the Constitution of the State independent of any grant by the Legislature.

The sole provisions of the Constitution upon this subject are:

> Section 9 of Article 14, which provides that "The State shall not be a party to, or interested in, any work of internal

improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of lands, or other property."

Section 23, Article 4, which provides "The Legislature shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person; nor vacate or alter any road laid out by Commissioners of Highways, or any street in any city or village, or in any recorded town plat."

Sections 13 and 14 of Article 15 which are as follows:

"SEC. 13. The Legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit."

"SEC. 14. Judicial officers of cities and villages shall be elected, and all other officers shall be elected or appointed at such time and in such manner as the Legislature may direct."

And Section 38, Article 4, which is as follows:

"SEC. 38. The Legislature may confer upon organized townships, incorporated villages and cities, and upon the Boards of Supervisors of the several counties, such powers of a local, legislative and administrative character as they may deem proper."

These provisions of the Constitution have been many times considered by the Supreme Court of Michigan, and the unvarying decision of that Court is that the proper instrumentality, under the Constitution, for making public improvements and for the control of municipal affairs is a municipal corporation.

People vs. Supervisors Ingham County, 20 Michigan, 102.
People vs. Hulbert, 24 Mich., 44.
Auditor General vs. Lothrop, 24 Mich., 235.
Hubbard vs. Township Spring Wells, 25 Michigan, 153.
Board of Park Commissioners vs. Detroit, 28 Mich., 228.
Atty. General vs. Common Council of Detroit, 29 Mich., 108.
Atty. General vs. Common Council of Detroit, 58 Mich., 213.
Metropolitan Police vs. Board of Auditors, 68 Mich., 576.
Davies vs. Board of Supervisors, 89 Mich., 295.

Taylor vs. Street Ry. Co., 80 Mich., 77.
City of Detroit vs. Detroit Citizens' Street Ry. Co. *et al.*, 64 Fed. Rep., 628 at 642.

But none of the cases holds that the city has any power other than such as is conferred upon it by grant of the Legislature.

As regards these provisions of the Constitution, we contend that the acts which they prohibit the Legislature from performing in reference to municipal affairs, the Legislature may authorize a city to perform, *and that unless a city is expressly authorized thereto by an act of the Legislature such acts cannot be done by that city.*

Section 9 of Article 14 and Section 23 of Article 4 above quoted are exclusively inhibitory. They declare what the State shall not do.

Section 13 of Article 15 calls for effective action. It says that the Legislature *shall* provide for the incorporation and organization of cities and villages. Section 14 enacts that the officers of these cities and villages shall be elected or appointed at such time and in such manner as the Legislature may direct, while Section 38 of Article 4 provides that the Legislature may confer upon organized townships, incorporated villages and cities "*such powers of a local legislative and administrative character as they may deem proper.*"

The question as to the source from which municipal corporations of Michigan derive their powers has been so frequently considered by the Supreme Court of that State, resulting in the uniform and established doctrine that they have and can exercise no powers except such as they derive from the Legislature, and the whole subject is so thoroughly reviewed in the opinion of the Supreme Court (Printed Record, pp. 471-473), that we shall not presume to amplify or add to the statement of the law there set forth and ending with the proposition which is fatal to the appellant's contention, "that municipal corporations have no power to grant exclusive rights to street railway, gas or water companies, *except upon authority from the Legislature.*"

We assume that in the consideration of such a subject the decisions of the State Court as to the purpose and effect of the Constitution, even if not conclusive upon this Court, should nevertheless be most carefully considered.

Fallbrook Irrigation District vs. Bradley, 164 U. S., 112, 160.

And, as the Supreme Court of Michigan has well said in its decision of this particular case (Printed Record, p. 473):

> " It is, however, strenuously urged upon us that in view of the general policy in favor of local self-government, which is evidenced by the provisions of the constitution quoted and the decisions of this court, the grant to the municipality by the legislature should receive a construction more liberal than if it were a delegation of power which the legislature could itself exercise, it being urged in the same connection that the legislature could not grant an easement or right to use a particular street for street-railway purposes. Without affirming or denying the latter proposition, we do not think the precedent contention would be solved by a determination of that question. *It is clear that whatever power the local authorities have to grant an easement in the street for street-railway purposes is derived from the legislature.* Whether the streets of a city be directly controlled by the legislature in such sense that a direct grant may be made, or whether the trust be one which may be executed through certain local authorities only; the reasons for construing a grant of authority with strictness are equally forcible. Whether such a franchise be the subject of a grant by the state direct or by the local authorities, the power over the streets is a trust, and the authority to grant an exclusive right ought not to be implied any more because the legislature has not reserved to itself or does not originally possess the power to grant an easement in a particular street."

According to these provisions of the Constitution above quoted it seems entirely clear that such power as the Legislature has not deemed proper to confer upon cities and villages the cities and villages do not possess. This point is expressly decided in the case of Taylor vs. The Street Railway Company, 80 Michigan, 77. The question there discussed was the power of a municipal corporation to grant rights to a street railroad company. At page 82 the Court says :

> " It becomes, therefore, important to determine the power conferred by the Legislature upon the Common Council of Bay City. The council can, of course, confer no greater

right upon the defendant than is authorized by its charter. Municipal corporations derive their sole source of power from *legislative enactments.* The rule has been long and unquestionably established that municipal corporations are limited to those powers which are granted :

"1. In express words. 2. Necessarily incident to the powers expressly granted. 3. Those which are essential and indispensable to the declared objects and purposes of the corporation.

1 Dillon Municipal Corporations, Section 89.

"* * * The power to grant immunity to such corporations from legislative regulation and control is an important one. A village of a few hundred inhabitants may, in much less than thirty years, grow to a city of many thousands. Bay City well illustrates this fact. What in the one would cause no damage might in the other cause great damage. The village council cannot well provide regulations and ordinances applicable to a large city. It is, therefore, highly important that the Legislature should retain the power to pass enactments for the control of these *quasi*-public corporations suitable for the changed state of affairs. These who claim immunity from such control must be able to point to the clear enactment of the statute establishing it."

Section 24 of the Train Railways Act (Laws of Michigan, 1861, p. 12) gives any corporation formed for the purpose of operating a railway through the city streets the exclusive right to use and operate any *street railways constructed, owned* or *held* by them, provided the consent of the municipal authorities is first procured. This is the whole extent of the power of the city to make any grant of rights in the streets to the company, and it cannot be enlarged by implication. The further provision of the act that, if such consent shall have been given and accepted, such authorities shall make no regulations whereby the company shall be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, does not apply in the present case.

If the draughtsman of the act could have anticipated the claim which the plaintiff in error now makes, he could hardly have used more apt language to prevent the complainant's success. The pro-

hibition upon the municipal authorities to deprive any corporation of its rights is expressly limited to rights *in the street in such consent or grant named.*

II.

The construction which is required to be given to statutes which confer upon corporations rights and franchises precludes the claim that the City of Detroit had power under the charter of the city or under the street-railroad statutes to grant the exclusive right claimed by the plaintiff in error.

The law is that statutes by which rights and franchises are conferred, or are authorized to be conferred, upon corporations, are in all cases strictly construed in favor of the public and against the corporations. A grant of an exclusive right in the streets is not made nor authorized to be made unless such grant or authority is given in express and explicit terms.

This doctrine has been so many times asserted by this Court that citations seem almost impertinent.

In Oregon Railway Co. vs. Oregonian Railway Co., 130 U. S., Mr. Justice MILLER, in delivering the opinion of the Court, says (at p. 26):

> "It is to be remembered that where a statute making a grant of property, or of powers, or of franchises to a private individual, or a private corporation, becomes the subject of construction as regards *the extent of the grant*, the universal rule is that in doubtful points the construction shall be against the grantee and in favor of the Government or the general public. As was said in the case of Charles River Bridge vs. Warren Bridge, 11 Pet., 420, 'in this Court the principle is recognized that in grants by the public nothing passes by implication' (See, also, Dubuque and Pacific Railroad Co. vs. Litchfield, 23 How., 66; Turnpike Co. vs. Illinois, 96 U. S., 63)."

The same question is again considered in Central Transportation Co. vs. Pullman's Palace Car Co., 139 U. S., 24. At page 49 the Court says:

> "By a familiar rule every public grant of property, or of privileges or franchises, if ambigious, is to be construed against the grantee and in favor of the public; because an intention, on the part of the government, to grant to private persons, or to a particular corporation, property or rights in which the whole public is interested, cannot be presumed, unless equivocally expressed or necessarily to be implied in the terms of the grant; and because the grant is supposed to be made at the solicitation of the grantee, and to be drawn up by him or his agents, and, therefore, the words used are to be treated as those of the grantee; and this rule of construction is a wholesome safeguard of the interests of the public against any attempt of the grantee, by the insertion of ambiguous language, to take what could not be obtained in clear and express terms (Charles River Bridge vs. Warren Bridge, 11 Pet., 420, 544–546; Dubuque & Pacific Railroad vs. Litchfield, 23 How., 66, 88, 89; Slidell vs. Grandjean, 111 U. S., 412, 437, 458). This rules applies with peculiar force to articles of association, which are framed under general laws, and which are a substitute for a legislative charter, and assume and define the powers of the corporation by the mere act of the associates, without any supervision of the Legislature or of any public authority (Oregon Railway vs. Oregonian Railway, 130 U. S., 26, 27)."

The same question was before the United States Circuit Court of Appeals in the case of the City of Detroit against the Detroit Citizens Street Railway Co., 64 Fed. Rep., 628. In the course of its opinion the Court, after considering the provisions of the Constitution above quoted, said (at p. 642):

> "It is impossible to draw from these provisions any recognition of inherent or ungranted authority in either the townships, villages or cities of Michigan. That they do have the effect to limit materially the ordinary powers of legislatures over the purely local affairs of such communities is most obvious.

> It is equally obvious that in regard to purely local affairs the legislature can only act by conferring discretionary power in regard to such subjects upon the local authorities. *If the legislature wishes to confer or withhold such power it may do so. If it shall deem such powers expedient, it may confer them with such limitations as it shall deem wise.*"

No power over the management of street railroads had been specifically conferred by the Legislature of Michigan upon the Common Council of the City of Detroit up to the time of the passage of the ordinance of 1862 under which the plaintiff in error asserts its claims. The only statutes of Michigan on the subject are contained in Sections 33 and 34 of the Train Railway Act as amended, being Sections 3526 and 3527 of Howell's Statutes, and Sections 13, 14 and 29 of the General Street Railway Act, being Sections 3548, 3549 and 3564 of Howell's Statutes.

These sections of the Train Railway Act are as follows:

> "SEC. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State.
>
> "SEC. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them; provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe: Provided, further, that, after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

The provisions of the other statute are, in effect, the same.

In the Street Railway Co. of Grand Rapids vs. The West Side Street Railway Co. of Grand Rapids *et al.*, 48 Michigan, at 436, the

Court, referring to the provisions of Section 29 of the General Street Railway Act (Sec. 3564 of How. St.), say:

> "The act also, by its language, brought all existing companies within its conditions, and compelled all future companies to conform to it."

These provisions of the two acts are that a street railroad company may construct and operate a street railroad on the streets of the city with the consent of the city, which consent is to be given under such regulations, terms and conditions as it may deem proper to impose as the condition of its assent.

This is the whole extent of the power of the city to make any grant of rights in the streets to the company.

When it has given its consent under the Train Railway Act, it

> "shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof."

When it has given its consent under the General Street Railway Act, "as in this act provided," the city "shall not revoke such consent nor deprive the company of the rights and privileges so conferred."

What the city is authorized to grant is clearly expressed in the terms of the Train Railway Act to be its consent to the street railway company "to construct a railway" through the streets of the city.

Under the General Street Railway Act it is to grant its consent to any street railway corporation to "construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways as shall be designated and granted from time to time for that purpose."

There is no authority expressed, or indicated in any manner, that the city can grant an exclusive right, or grant its consent to an exclusive right, to the company in the streets. Its power to grant and the whole of the grant which it can make are defined by the statute, and it is its consent simply to a company to construct a railway in the streets. What is its power to grant? Its consent.

What consent? Its consent to construct or to construct and use and operate a street railroad upon the streets designated therefor.

When it has granted its consent to a street railway company to construct and operate a railroad on the streets, there is left in the city the power, beyond all question, to grant a like consent to another street railroad company to construct and operate its railroad on the same streets, and there is nothing in the statute giving to the city authority to part with that power.

The granting away of that power or the parting with it, by contract or agreement, is not included in the authority to make regulations, terms and conditions as the condition of its consent.

The contemplation of the statute in relation to the regulations, terms and conditions which the city may impose is clearly that they (the regulations, terms and conditions) are limitations upon the terms of the consent granted, and are not an authority to make an additional grant.

They have reference to matters affecting the limit of time to which that consent extends, and to acts which may be done in the work of constructing and operating the road and charging tolls.

For instance, if the consent were given to construct and operate the road, without any regulations, terms and conditions being imposed, then the company might use its own judgment as to the kind of track it would use, the manner in which the track would be laid and maintained on the street, the kind of cars it would use, how they should be lighted and warmed, how often they should run and where they should stop, and other matters of like character.

It is under the power to make regulations, terms and conditions that matters of that character are intended to be controlled.

Citizens' Horse R. Co. vs. Belleville, 47 Ill. App., at 405, 406.

There is no implication of an intention in the statute that the city should grant to the company any greater right than that which is contained in the simple giving of the city's consent to construct and operate the company's road on the street, nor any implication that the city, in granting such consent, shall part with any of its legislative power over the streets, not necessarily involved by the giving of the consent specified in the statute.

In Railway Co. vs. Philadelphia, 101 U. S., 528, the opinion was delivered by Mr. Justice CLIFFORD. At the bottom of page 539 he says:

"Charters of private corporations duly accepted, it must be admitted, are in general executed contracts, but the different provisions, unless they are clear, unambiguous and free of doubt, are subject to construction, and their true intent and meaning must be ascertained by the same rules of interpretation as apply to other legislative grants, the universal rule being that whenever the privileges granted to such a corporation come under revision in the Courts, the grant is to be strictly construed against the corporation and in favor of the public, and that nothing passes to the orporation but what is granted in clear and explicit terms (Rice vs. Railroad Company, 1 Black., 358; Charles River Bridge vs. Warren Bridge, 11 Pet., 420).

"Whatever is not unequivocally granted in such charters is taken to have been withheld, as all such charters and acts extending the privileges of corporate bodies are to be taken most strongly against the corporators (Sedgwick, Stats. [2d Ed.], 292; Lees vs. The Manchester & Ashton Canal Co., 11 East., 644)."

In Fertilizing Company vs. Hyde Park, 97 U. S., 659, the opinion of the Court was delivered by Mr. Justice SWAYNE. He says at page 666:

"The rule of construction in this class of cases is that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this Court."

In Stein vs. Bienville Water Supply Co., 141 U. S., 67, the Court said (p. 80):

"It is a settled rule of construction that, 'in grants by the public, nothing passes by implication;' and 'if, on a fair reading of the instrument, reasonable doubts arise as to the proper interpretation to be given to it, those doubts are to be solved in favor of the State; and where it is susceptible

of two meanings, the one restricting and the other extending the powers of the corporation, that construction is to be adopted which works the least harm to the State."

In Grand Rapids Electric Light and Power Co. vs. Grand Rapids, &c., Co., 33 Fed. Rep., 659, the complainant claimed, under a grant by the city authorities, the exclusive right to light the streets of the city, and the Court said, Mr. Justice JACKSON delivering the opinion:

"It is conceded that, in the charter of Grand Rapids in force when said ordinance of 1880 was passed, there is no *express* power or authority conferred upon the Common Council to make such a grant of *exclusive* rights and privileges in, to, or over the streets of the city. The authority for the making of this *exclusive* grant must, therefore, as complainant's counsel properly admit, be found and sustained, if at all, upon what are called the *implied* powers of the Common Council. It is too well settled to need the citation of authorities in its support that municipal corporations, which are mere political agencies of the government, forming but parts of the machinery employed in carrying on the affairs of the State, possess and can exercise only *such* powers as are 'granted in *express words* or those *necessarily* or *fairly* implied, *in or incident to the powers expressly conferred, or those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.*' Implied powers, says Judge COOLEY (Const. Lim., marg. p. 194) are such as are *necessary* in order to carry into effect those expressly granted, and which must therefore be presumed to have been within the intention of the legislative grant. The courts of the country, State and Federal, have not been disposed to extend or enlarge the power of municipalities by implication; on the contrary, they have, in the main, applied to their charter powers substantially the same rule of strict construction that is applied to charters of private incorporation, on the ground, as stated in Cooley's Constitutional Limitations (marg. p. 195), that 'the reasonable presumption is that the State has granted, in clear and unmistakable terms, all that it has designed to grant at all.'"

Mr. Justice JACKSON then cites from the opinion of this Court, delivered by Mr. Justice NELSON, in Minturn vs. Larue, 23 How., 436, as follows:

> "It is a well-settled rule of construction of grants by the Legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act, or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the Legislature must be resolved in favor of the public."

In Saginaw Gas Light Co. vs. Saginaw, 28 Fed. R., 529, the question of the power of the city authorities to grant to a gas company the exclusive privilege of lighting the streets of the city was passed upon by Mr. Justice BROWN, now of this Court. On page 535 he says:

> "But whether, under a charter simply authorizing a municipal corporation 'to cause its streets to be lighted,' it may grant an exclusive privilege of this description for a term of years, is a widely different question. Bearing in mind that the powers of the municipality are strictly limited by its charter, it is needful to inquire whether the grant of an exclusive franchise is a proper and reasonable method of exercising its authority to light the public streets and furnish gas to its inhabitants. We think it entirely clear that the city is not bound to manufacture and furnish the gas itself, but may contract with any individual or company for lighting the city, and, as an incident thereto, may authorize the use of its streets for laying pipes and mains. Indeed, this is not only a usual and convenient mode of exercising its power, but, in the general law for the organization of gas companies, it is expressly provided that such corporation shall have power to lay conductors, etc., with the consent of the municipal authorities of such city, town or village, under such reasonable regulations as they may prescribe. There is here an implied, if not an express, authority for the city to contract with any corporation which may be organized under the act.

"It is clear, however, that there is no authority expressly given to confer upon any corporation an exclusive right to occupy its streets for a number of years. It is true, it may, in effect, grant such exclusive right by refusing to any other company the franchise or privilege it has already granted to one, but this presupposes a continued and abiding consent on the part of the city to keep alive its contract, and is quite distinct from the right of the city to surrender its power to make another contract, and to vest in the plaintiff the right to determine for itself whether a rival company shall be permitted to enter its domain. While there is great force in plaintiff's argument that individuals would not be likely to incur the great expense of establishing gas works and laying pipes without some assurance of a profitable and continued employment for a sufficient length of time to remunerate them for their outlay, we think the law is too well settled that this cannot be done without express permission of the sovereign power to be now disturbed. If a grant of this kind for 30 years may be supported, why may it not, by parity of reasoning, be upheld for a hundred years, or in perpetuity?"

Again, on page 536, he says:

"We are not, however, without the direct authority for our proposition that nothing will be intended from a legislative grant to a municipal corporation."

Mr. Justice BROWN quotes from following cases:

"In Minturn vs. Larue, 23 How., 435, it was held that 'a charter authorizing the City of Oakland to establish and regulate ferries, or to authorize the construction of the same, gave no power to the city to grant an exclusive privilege.' In delivering the opinion Mr. Justice NELSON observed:

"'It is a well-settled rule of construction of grants by the Legislature to corporations, whether public or private, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the Act, or derived therefrom by necessary implication, regard being had to the objects of the grant. Any ambiguity or doubt arising out of the terms used by the Legislature must be resolved in favor of the public.'

"In the case of Wright vs. Nagle, 101 U. S., 791, to which reference has already been made, it was held that legislative power given to an inferior body to establish ferries and bridges did not authorize such body to grant the exclusive right to one person, though there was no doubt that the Legislature itself had authority to make such a grant. The case is upon all fours with the one under consideration.

"The same question was argued with great skill and thoroughness in State vs. Cincinnati Gas Light & Coke Co., 18 Ohio St., 262. In this case the charter conferred on the gas company power 'to manufacture and sell gas, to lay pipes,' etc., provided the consent of the city council be obtained for that purpose. Under a power given to the City Council of Cincinnati, to cause said city or any part thereof to be lighted with oil or gas,' and to levy a tax for that purpose, it contracted to invest the defendant with the full and exclusive privilege of using the streets, etc., for the purpose of lighting the city for the term of 25 years, and thereafter, until the city should purchase the works. It was held that, while there was no doubt that the city might by contract provide for lighting by gas, there was no necessity for making such right exclusive, and that the city had no authority to make the grant."

Again on page 539, he says: "It is scarcely necessary to say that, in the jurisprudence of Anglo-Saxon communities, gifts of the sovereign are treated with less consideration, and a totally different rule of interpretation obtains. Nothing is better settled than that statutes creating monopolies, granting franchises and charters of incorporation, must be construed liberally in favor of the public, and strictly as against the grantee. Monopolies are justly regarded as encroachments upon the natural rights of the people, and are viewed with jealousy by Courts. Whatever is not equivocally [unequivocally] granted in such act is taken to have been withheld. All acts of incorporation, and acts extending the privileges of incorporate bodies, are to be taken most strongly against the companies (Sedg. St. Law, 339).

"In regard to the rights of franchises, it is said by the Supreme Court that, where the grant is designed by the sovereign power to be a general benefit and accommodation to the public, if the meaning of the words be doubtful, they

shall be taken most strongly against the grantee and for the government, and, therefore, the grant is not to be extended, by implication, in favor of the grantee, beyond the obvious and natural meaning of the words employed. Other authorities, putting it sententiously, say that a doubt is fatal to a grant."

In Parkhurst vs. City of Salem, 32 Pac. R., 304, decided by the Supreme Court of Oregon, February, 1893, the question which is presented in the present case of the power of the city to grant the exclusive right to a street railroad company to lay its tracks in the city was the question involved.

The City of Salem was authorized by its charter

> " to permit, allow and regulate the laying down of tracks for street cars and other railroads upon such streets as the Council may designate, and upon such terms and conditions as the Council may prescribe " (p. 304).

It will be observed that these terms are substantially the same terms in which the authority of the City of Detroit is conferred by the Statute of Michigan. The Court states the question to be (p. 304) as follows : " The precise question then is : Had the City of Salem, under the grant of an exclusive power ' to permit, allow and regulate the laying down of tracks for street cars,' upon such terms and conditions as it may prescribe, the power to grant for a term of years the exclusive right to occupy its streets with street railroads ?"

After quoting from Justice BREWER'S decision above cited in 24 Fed. R. and other authorities from the Federal Courts, this language is used (p. 305) :

> " Now the charter of the City of Salem does not, in express terms, confer upon the city the power to grant an exclusive franchise for a street railway, nor can such power be implied, because it is not essential to carry into effect the powers expressly given (Barnett vs. Denison, 145 U. S., 135, 12 Sup. Ct. Rep., 819; Com. vs. Railway Co., 27 Pa. St., 339). The only power given is ' to permit, allow and regulate,' and this must be taken as the measure of its powers in the premises, and by all the authorities this is not sufficient to authorize the granting of exclusive franchises or privileges. It is true this power, so far as granted, is by the charter

made exclusive; that is, the city alone has the right and power to permit, allow and regulate the use of its streets for the purpose indicated. To this extent it is endowed with complete legislative sovereignty. That sovereignty has no limit so long as the city keeps within the powers granted. But the exclusive power 'to permit, allow and regulate' the laying down of car tracks is quite a different thing from the power to grant an exclusive permit for that purpose. The one case presupposes a continuing right and power in the city, to be exercised whenever, in the opinion of the council, the public conveniences or necessity may require, while the other is a right to delegate to some private individual or corporation a portion of the municipal authority over the streets, and vest the exclusive power in its grantee to permit the use of the streets by another railway. If the city has the power to grant an exclusive privilege for a street railway, it has, under the same section of the charter, like powers in reference to water and gas pipes, electric light and telephone wires and poles and many other enumerated powers. And, as Mr. Justice COLLEY says, in Gale vs. Kalamazoo, 23 Mich., 344: 'If it might do these things, it is easy to perceive that it might not be long before the incorporation itself, instead of being a convenience to its citizens, would have been used in various ways to compel them to submit to innumerable inconveniences, and would itself constitute a public nuisance of the most serious and troublesome description. Individual citizens, looking only to the furtherance of their private interests, might in various directions engage it in permanent contracts which, while ostensibly for the public benefits, should impose obligations precluding further improvements and depriving the town prospectively of those advantages and conveniences which the municipality was created to supply, and without which it is worthless. The charter of the City of Salem only confers upon the municipality the general power to permit or allow the use of its streets for street railway purposes and under such a power the adjudged cases are practically unanimous that the city cannot grant exclusive privileges.'"

After citing a great number of authorities the Court say (pp. 306, 307):

"The only cases to which we have been cited or have been able to find apparently holding a contrary doctrine are City of Newport vs. Newport Light Co., 84 Ky., 167, and Des Moines Ry. Co. vs. City of Des Moines, 73 Iowa, 513, 33 N. W. Rep., 610, and 35 N. W. Rep., 602, both of which have been criticised and declared to be contrary to the decided weight of authority, by BROWN, J., in Saginaw Gas Light Co. vs. Saginaw, *supra*, and JACKSON, J., in Grand Rapids E. L. & P. Co. vs. Grand Rapids, etc., *supra*, and are considered by Mr. McKinley, author of the article on 'Municipal Corporations' in the American and English Encyclopedia of Law, to be out of line with the authorities on the subject."

In State vs. The Cincinnati Gas Light Co., 18 Ohio St., 262, the claim was made on the part of the gas company to an exclusive right, under an ordinance of the City of Cincinnati, to use the streets for the purpose of laying down gas pipes and conveying gas for lighting the city. The Court held that the city had no power to grant such exclusive right, and, after considering the question of the power of the Legislature itself to grant such exclusive right, say (p. 293):

"And, assuming that such a power may be exercised directly, we are not disposed to doubt that it may also be exercised indirectly through the agency of a municipal corporation clearly invested for police purposes with the necessary authority. But we have referred to these authorities as our justification for saying that when a franchise so far in restraint of trade, and so pregnant with public mischief and private hardship, is drawn in question, and is claimed to be derived through a municipal ordinance or contract, the power of the municipal authorities to pass the ordinance or enter into the contract must be free from doubt. It must be found on the statute book in express terms, or arise from the terms of the statute by implication so direct and necessary as to render it equally clear."

In New Orleans, etc., R. Co. vs. City of New Orleans, 11 So. Rep., 78, the question was of the power of the city to grant the exclusive right to a street railroad company to construct its road

in the streets of New Orleans. In denying that the city possessed such power the Court say (p. 79):

> "The grant of power to the city council in this matter, under the charter of 1870, in force at the date of this contract, is found in Section 12, as follows: 'To regulate and make improvements in the streets, * * * to regulate the proper government of carts, drays, carriages, omnibuses and other vehicles of every description, freight, locomotive, passenger and street cars which run in the streets and within the limits of the city.' We have been referred to, and have ourselves been able to find, no authority holding that such a grant included a delegation of power to grant an exclusive right of way over streets to a railway company. The power to 'regulate the streets' is a persisting power, not exhausted by a single exercise thereof. The case of Brown vs. Duplesses, 14 La. Ann., 854, held that it was a proper exercise of this power of regulation for the city to authorize street railways to be established on the streets. If one Council, under this power to regulate, had the right to establish such a railway, it is difficult to understand why a succeeding Council, having precisely the same power, should not have the right to establish a similar railroad, when found necessary in the public interest, and provided always it did not destroy or impair the substance of the former grant.
>
> "The legislative grant to the City of New Orleans of the power to establish street railways is subject to the same construction which would be applied to a direct legislative grant to a private corporation for the same purpose, and as to the latter Judge DILLON says: 'A legislative grant of authority to construct a street railway is not exclusive unless so declared in terms, and, therefore, the Legislature may at will, and without compensation to the first company, authorize a second railway on the same streets or line, unless it has disabled itself by making the first grant irrepealable and exclusive' (2 Dill. Mun. Corp., 3d Ed., par. 727). The same principle must be applied in the construction of legislative delegations of authority to municipal corporations. Unless the terms of the delegation embrace expressly the power to grant exclusive rights, or are so sweeping as to operate a complete abdication of the whole legislative power in favor

of the corporation, it cannot be held to include such extraordinary power, the possession of which, even by the Legislature, is not free from dispute."

The cases of the City of Newport vs. Newport Light Co., 84 Ky., 167, and Des Moines R. Co. vs. City of Des Moines, 73 La., 513, are opposed to the above rule, but these cases are rejected by Mr. Justice JACKSON in the case of the Grand Rapids Electric Light Co. vs. Grand Rapids Light Co., 33 Fed. R., 659, above referred to, and by Mr. Justice BROWN in the case of Saginaw Gas Light Co. vs. Saginaw, 28 Fed. R., 536, *supra*.

Long vs. City of Duluth, 51 N. W., 913.
North Baltimore R. Co. vs. North Ave. R. Co., 23 At., 466.

Clearly then, as no authority had been expressly conferred upon the City of Detroit to grant the Detroit City Railway Company the exclusive right which the plaintiff in error claims for it, the City had no power to grant that exclusive right.

III.

The ordinance of November 24th, 1862, under which the plaintiff in error advances its claim, did not make a grant of an exclusive right to construct a railway in all the streets of the city.

We refer again to the ordinance which appears upon page 12 of the printed record. We there find that the grantees are exclusively authorized to construct and operate railways through certain designated streets, and "*through such other streets and avenues in said city as may from time to time be fixed and determined by a vote of the Common Council of said City of Detroit and assented to in writing by said corporation, organized as provided in Section 1 of this ordinance, and provided that the corporation does not assent in writing within thirty days after the passage of such resolution of the Common*

Council ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route."

The plaintiff in error claims that under this ordinance, as extended by the ordinance of November 14th, 1879, it has, as regards all the streets of the city, the exclusive right to construct and operate a street railroad subject to the terms imposed by the ordinance of 1862, and that the Common Council of Detroit cannot grant to any other street railroad company the right to construct and operate a street railroad in any street of the city until such street has been fixed and determined by a vote of the Common Council as a street upon which it desires to have a street railway built, and the plaintiff in error has neglected for a period of thirty days after the passage of the resolution, to accept in writing such right.

But this construction is not justified by the language of the act.

It is not a grant or consent or agreement that the Detroit City Railway, the predecessor of the plaintiff in error, should have exclusive rights, or first rights, in all the streets of the city. It is a grant of an exclusive right in the streets which are *specifically named in the ordinance* and also of an exclusive right in such other streets as the Common Council shall thereafter fix and determine as streets upon which it desires to have a street railway built by the Detroit City Railway and through which the Common Council shall order the formation of new routes. But, if the Common Council in any case has not fixed and designated the streets to be built upon and has not ordered the formation of new routes through those streets, such streets are not within the purview of the ordinance.

If it had been the purpose of the ordinance to grant to the Detroit City Railway an exclusive right to construct a street railroad in *all the streets* of the city, that intention would have been expressed in plain terms, such as would convey that meaning and no other, but the ordinance certainly does not do this and when read in the light of the rules governing the interpretation of grants to corporations, must be given the construction for which we contend.

See

Stein vs. Bienville Water Supply Co., 141 U. S., 67.
Long vs. City of Duluth, 51 N. W., 913.
North Baltimore Ry. Co. vs. North Avenue Ry. Co., 23 Atlantic Rep., 466.
Oregon Railway Co. vs. Oregonian Railway Co., 130 U. S., 1 at p. 26.

IV.

The ordinance of November 24th, 1862, relates solely to a road, the cars of which should be drawn by animals exclusively.

Section 7 of the Ordinance (p. 14 of the Printed Record) provides that "the cars to be used on said railways shall be drawn by animals only." If any exclusive right was granted by this ordinance it was the exclusive right to construct a horse railroad or railroad on which the motive power should be animal power. That right is not infringed by a grant from the city to another street railway company of the right to construct and operate an electric street railway in the same streets.

The fourth section of the Ordinance of 194, the operation of which is here sought to be enjoined, and which is found on page 37 of the Printed Record, enacts that "all street railways constructed, maintained and operated by the overhead trolley-wire system of electricity."

In Omaha Horse Railway Company vs. Cable Tramway Co., 30 Fed. Rep., 324, the complainant had an exclusive grant to construct and operate horse railways in the City of Omaha. Afterwards the right was granted to the defendant to construct and operate a cable tramway in the streets of Omaha. The Horse Railway Company sought to enjoin the Cable Tramway Company from constructing its road on the ground that the complainant had the exclusive right to construct street railways in the city. In deciding against the complainant the Court said:

> "The initial and important question is whether a cable tramway is within plaintiff's exclusive grant of a right to build, erect, and operate horse railways. If the grant were made to-day it could seriously be contended that it was so included. There is such a clear and recognized distinction between horse railroads and cable roads that, applying the ordinary rules for the construction of legislative grants, neither kind of road would be included within a grant of the other. The contention, however, is that at the time of this grant cable roads were practically unknown; that the only known form of street railways was the horse railway; that the

terms 'street railroad' and 'horse railroad' were in common parlance used to describe the same thing; that in construing the grant we are to place ourselves back to the time at which it was made, and these terms 'horse railroad' and 'street railroad' being then used interchangably for the same thing, we are to suppose that the Legislature meant by the use of one term all that it would have meant by the use of the other, and that therefore all that would to-day be included within either term was within the scope of the grant. The rule for the construction of legislative grants is well settled. They are to be construed against the grantee and in favor of the public; and nothing passes unless it is obvious that the intent was that it should pass. I do not mean they are to be construed technically and narrowly, so as to defeat the very purposes of the grant, but that, giving to language its ordinary meaning, nothing will be included unless obviously within the scope of such meaning. * * *

"This rule of construction against the grantee, which applies in all legislative grants, obtains with the greater force in a case like the one at bar, where the grant claimed is not merely the right to do something, but of a right to exclude all the rest of the public from doing that thing. He who says that the State has given him a franchise, a right to that which without that franchise he could not do, will be compelled to show that the franchise, the right claimed, is within the terms of his grant. Much more strenuous must be the demand upon him for clear and explicit language in his grant when he claims that a part of it is not merely the franchise, the right to do, but also the right to exclude all others of the public from exercising the same right, and the State, as the representative of the public, from according the right to another. * * *

"Now, placing ourselves back at the time of this grant, what should be attributed to the legislature as its intent? It may be assumed that the only form of street railway in practical use was the horse railway, and that in common parlance the two terms were often used interchangeably. Is it probable that it intended to foreclose the public in advance from all benefits of possible inventions and discoveries in the matter of street railway travel and give them to this grantee? Or did it not rather

intend that its grantee should take that complete and single thing known as a horse railway, with all of which it was familiar, and retain for the public all of the unknown possibilities of invention and discovery in reference to modes of street railway travel? Did it intend to give that which it knew nothing of, or only that which it knew? It seems to me that the mere stating of the question suggests the inevitable answer. Indeed, assuming the conditions to be all as stated, if the legislature had used the words 'street railway' instead of the term 'horse railway,' a very pertinent question would arise, whether it intended to grant an exclusive right to any other than that form of street railway—to wit, horse railway—with which it was familiar. We are bound to assume that the Legislature is dealing with the known and not with the unknown, and that when it grants a franchise it only intends to grant that of which it has knowledge, and it is unreasonable to lay stress on the form of language or the words used for the sake of broadening an intent so as to include things not then known."

In Teachout vs. Des Moines Street Railway Co., 38 N. W. Rep., 145, the same question was presented between a street railway company, called the Narrow Gauge Company, which had been granted the exclusive right to construct and operate street railways, whose cars were to be moved by animal power, and a street railway company called the Broad Gauge Company, which was subsequently granted the right to construct and operate railways by electricity. Deciding in favor of the latter company, the Supreme Court of Iowa said:

"It seems to us, keeping in mind the fundamental rule that corporations are invested with such powers only as are expressly conferred upon them, and such other powers as are necessary to carry out those expressly granted, there is little room for discussion or debate as to the powers conferred upon the Narrow Gauge Company by this ordinance. It has the exclusive right to operate its railways by animal power; and it has no more right to interpose objections to the building and operation of other street railroads, to be operated by other power, than if no grant of power has ever been made to it. The city, it is true, agreed by section 10 of the ordinance, that it would not 'confer upon any person or corporation any

privileges which will impair or destroy the rights and privileges herein granted to said company.' It is strenuously contended that the granting of the right to operate other street cars will necessarily impair the rights of the Narrow-Gauge Company, by diminishing its revenue, which is derived from the carriage of passengers. Perhaps this argument is sufficiently answered by the thought that, when the city made the conntract, based upon this ordinance, the parties thereto were dealing *with the known and not with the unknown*. It may well be questioned whether the city had any power to contract that no other means of public travel should be allowed upon the streets of the city except by cars drawn by horses for the period of thirty years. If so, the establishment of hack lines, or omnibus lines, or other means of public conveyance, would impair the revenue of the Narrow-Gauge Company, and thus impair its rights under this ordinance. Its right is to operate a horse railroad. It is entitled to the exclusive right to do so, and to use all improvements that may be made thereto; but to nothing more. The city cannot impair that right; but it does not follow that it may not authorize other means of street travel. It did not undertake to confer upon the co pany the right to carry all the passengers who might desire to travel by public conveyance upon the streets; and it did not by the ordinance contract that new and improved and undiscovered methods of travel might not be adopted as the public wants might demand. This ordinance and contract were made by the city in behalf of the public, and it should not be so construed as to fetter and prevent the right to use new methods and appliances, the result of the inventive genius of the age, or to apply the discovery and application of the latent powors of nature to the uses of man."

These cases are directly in point and against the claim of the plaintiff in error in the case at bar.

Nor is the plaintiff's claim helped by the third section of the ordinance of the Common Council of the City of Detroit, approved January 3d, 1889, and found on page 30 of the printed record, by which permission is given to the Detroit City Railway, the predecessor of plaintiff in error, " whenever it shall deem it advisable, to substitute in lieu of animal power such system of electric or other

motive power, except steam, as shall seem best in its judgment for the purpose of properly and safely conducting its business in said Cityof Detroit upon any or all of its said lines now in use and operatd, or hereafter to be in use and operated, by said company."

This ordinance does not grant or attempt to grant to the Detroit City Railway an exclusive right to construct and operate electric railroads in all streets, nor does it enlarge any exclusive grant of the Ordinance of November 24th, 1862, so as to make it still apply in case the Detroit City Railway should become an electric road.

V.

The unanimous opinion of the Supreme Court of Michigan in this cause will be found at page 469 of the Printed Record, and it seems quite useless to attempt to add to the sound reasoning and conclusion of that opinion.

VI.

The decree of the Supreme Court of Michigan should be affirmed.

PHILIP A. ROLLINS,
JOSEPH H. CHOATE,
Of Counsel for the City of Detroit, Defendant in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

THE DETROIT CITIZENS' STREET RAILWAY COMPANY,
Plaintiff in Error,

vs.

THE CITY OF DETROIT, and THE DETROIT RAILWAY,
Defendants in Error.

BRIEF FOR THE DETROIT RAILWAY—DEFENDANT.

The plaintiff in error claims that it acquired by purchase the exclusive right to construct and maintain street railways in all of the streets of the City of Detroit, and that the city, by virtue of an ordinance approved November 24th, 1862, surrendered all power to grant authority to any other street railway company to construct or maintain a street railway in any of the streets of the city, until after the Common Council had designated the streets through which it desired a street railway constructed, and offered to plaintiff the first opportunity to construct such railway.

If plaintiff's claim be sustained, it establishes a complete monopoly of the right to construct and operate a street railway in any of the streets of the City of Detroit.

November 24th, 1862, an ordinance was approved grant-

ing to H. K. Sanger and his associates, organized into a corporation, consent and authority to lay a single or double track railway on and along the course of the streets therein specifically mentioned.

Section 2 of said ordinance provides that the said grantees, by the provisions of this ordinance, are exclusively authorized to construct and operate railways, as herein provided, on and through Jefferson and other streets named, "and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council of said City of Detroit, and assented to in writing by said corporation, organized as provided in section 1 of this ordinance, and provided the corporation does not consent in writing within thirty days after the passage of said resolution of the council, ordering the formation of new routes, then the Common Council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track or rails already laid, at their own cost and expense."

The plaintiff, The Detroit Citizens' Street Railway Company, claims to have acquired all the rights originally granted by the ordinance of November 24th, 1862, including the extension of said exclusive rights for thirty years from November 14th, 1879.

On December 4th, 1894, the Common Council of the City of Detroit adopted an ordinance granting its consent to the defendant, the Detroit Railway, to construct and operate a street railway on certain designated streets in the City of Detroit. The streets upon which the Detroit Railway tracks were constructed, and particularly enumerated in the ordinance aforesaid, are not named in the original ordinance claimed by plaintiff or in any ordinance for the construction of a railway in the City of Detroit, the right to which is now claimed by plaintiff.

The Detroit City Railway was organized May 9th, 1863, for the purpose of carrying into effect the ordinance of November 24th, 1862, under the Train Railway Act of Michigan.

Laws of 1855, p. 338, as amended by the Laws of 1861, p. 11.

The original Train Railway Act did not authorize the organization of street railways, but the amendment of 1861 authorized the organization of such companies and the construction and operation of street railways in and through the streets of any town or city in the State. This law was amended in 1867, section 34, so as to read as follows:

"All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways, constructed, owned or held by them: *Provided*, That no such company or corporation shall be authorized to construct a *railway* under this Act through the streets of any town or city, without the consent of the municipal authorities of such town or city, and under such regulations, and upon such terms and conditions as said authorities may from time to time prescribe: *Provided, further*, That after such consent shall have been given *and accepted by the company* or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway *in the street in such consent or grant named pursuant to the terms thereof.*"

Laws of 1867, p. 257.

Plaintiff claims substantially:

First—That the Common Council of the City of Detroit in 1862 had authority to grant to the Detroit City Rail-

way the exclusive right to construct and operate street railways in all the streets of the city, for a period of forty-seven years, to-wit, from November 24th, 1862, to November 24th, 1909, and that no succeeding council could grant authority to any other street railway company to construct and operate a street railway on any street in the city, without the permission of the Detroit City Railway.

Second—That the construction and operation of the railway by defendant, under the ordinance adopted by the Council December 4th, 1894, infringes the exclusive rights held by plaintiff.

I.

The legislation by the Common Council of the City of Detroit, and the acquiescence of the Detroit City Railway, constitute a rejection of the plaintiff's rights and claim made in this cause under the Ordinance of November 24th, 1862, and such legislation and conduct sustains the position taken by the defendant.

(A) When the ordinance of November 24th, 1862, was adopted, the City of Detroit embraced a very small territory, and a population of less than fifty thousand. Very few, if any, of the streets mentioned in the ordinance granted to the defendant were then laid out or established as public highways. To-day the territory of the city has been extended so as to embrace many times that of its original dimensions, and its population has increased to upwards of three hundred thousand. The changes that have been wrought since 1862 have been wonderful. Its streets, then of but a few miles in length and limited in number, have been extended until they cover over five hundred miles, reaching out into what were then cultivated fields, but now lined with spacious

dwellings. The methods and customs of the people have changed. From slowly hauled horse cars and five cent fares, we have come to a modern equipment of rapid running electric railways, at a greatly reduced rate of fare, of vast importance to the people.

The evidence establishes the fact that many of the streets specifically named in the original ordinance, were abandoned, and the right to construct a street railway upon such streets subsequently granted to other street railway companies.

Testimony of C. M. Burton, pp. 303, 304.
Maps, Exhibits "A" and "B," pp. 303, 304.

On the 3rd day of January, 1865, an ordinance was granted to the Fort Wayne & Elmwood Street Railway Company for the construction and operation of a street railway on Fort street and several other streets, which was put into operation and is still maintained as a separate corporation.

Exhibit "15," p. 380.

On the 1st day of May, 1868, an ordinance was granted to the Grand River Avenue Street Railway Company to construct on Grand River and Woodward avenues a street railway, which was duly constructed and operated under such ordinance for upwards of twelve years, by a corporation organized for such purpose, before the same was purchased by plaintiff.

Exhibit "24," p. 387.

On the 28th day of March, 1873, an ordinance was adopted granting to the Detroit Western Transit Railway Company the right to construct and operate a street railway on certain streets not mentioned in plaintiff's original ordinance.

Exhibit "35," p. 398.

The Common Council, from time to time, adopted ordinances by which it gave consent to the construction of street railways by other companies upon highways not specifically named in plaintiff's original ordinance, in substantially the same manner that defendant received and accepted the ordinance under which its railway was constructed, to wit:

To the Grand Trunk Junction Street Railway on Congress, Larned and other streets June 13th, 1873.

Exhibit "37," p. 404.

To the Central Market, Cass Avenue and Third Street Railway.

R., pp. 330, 249, 250.

To the St. Aubin Street Railway on St. Aubin avenue, July 11th, 1873.

Exhibit "38," p. 407.

To the Highland Park Railway on Woodward avenue, from railroad crossing northerly to city limits, July 13th, 1886.

Exhibit "39," p. 411.

It is admitted by plaintiff that all of the foregoing franchises were granted and lines constructed and operated upon the streets mentioned in said ordinances by said companies, many of them for a period of several years, and subsequently their rights and property acquired by plaintiff.

The Common Council proceedings show that no protest or objection was made to the Common Council by the Detroit City Railway to the adoption of any of the above mentioned ordinances, with a single exception.

(B) It will appear from the evidence that all grants of authority to construct a railway on additional streets to those specifically mentioned in the original ordinance of

the Detroit City Railway were given by a special grant of the Common Council, subject to conditions other than those of the ordinance of November 24th, 1862, and in each case a written acceptance of such terms of the ordinance by said company is required, *and in no instance was there ever a designation of streets or laying out of routes by the Common Council under the Ordinance of November 24th, 1862, and giving plaintiff's company thirty days to consent thereto, nor did plaintiff or its predecessor ever request, during all these years, the Common Council to lay out additional street railway routes, as they now claim was contemplated by the terms of the Ordinance of November 24th, 1862.*

Record, pp. 355, 356, 359.

(C) *The undisputed evidence shows that the street railway lines constructed and operated by the defendant were necessary to meeet the public demand;* that plaintiff took no steps to supply, prior to the granting of the ordinance of December 4th, 1894, the needs of the public, that such lines are not competitors of plaintiff's lines, and do not materially affect the traffic upon or value of plaintiff's railway.

Testimony H. A. Evertt, pp. 86, 87.
Testimony H. C. Ludden, City Engineer, p. 93.

(D) Section 2 of the ordinance of 1862 provides for the construction of railways on certain streets mentioned and "through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the Common Council. * * * *ordering the formation of new routes*, then the Common Council may give the privilege to another company," etc.

This is *not* a grant, consent or agreement that plaintiff shall have *first* rights in *all* the streets of the city, but only

the exclusive right in the streets *specifically named*, and such other streets as the Common Council shall *thereafter fix and determine as streets which it desires to have a street railway built upon by plaintiff and for which the Council shall order the formation of new routes.* Until the Common Council shall establish new routes, designate new streets, and order the construction of a railway thereon by plaintiff, no rights or privileges can be claimed by plaintiff under Section 2 of said ordinance.

(E) In order to give effect to plaintiff's claim under the ordinance, it must be admitted that plaintiff holds the right to elect whether it will build a street railway upon any streets which the city or the people may deem necessary for the accommodation of the public traffic.

Admitting its validity, we submit that with the most liberal construction of the language referred to in the ordinance, the city reserved the right to give its consent for the construction of other street railways in the public highways of the city, as the welfare and accommodation of the public might require from time to time.

II.

If plaintiff was granted any exclusive rights under the ordinance, it was limited to the terms, conditions and provisions of the entire ordinance, and consequently the exclusive right, if any, was limited to horse railways; "The cars to be used on said railway shall be drawn by animals only, at a rate of speed not exceeding six miles per hour."

This grant, even if admitted to be exclusive, is not infringed by the grant to defendant to construct and operate an electric street railway. Defendant's rights are limited to *electric street railways only*, and, therefore, not a violation of plaintiff's grant.

In the opinion in the case of Omaha Horse Railway Company vs. Cable Tramway Company (30 Fed. R., 327, 328), the following language, directly in point, was used:

"The initial and important question is whether a cable tramway is within plaintiff's exclusive grant of a right to build, erect and operate horse railways. If the grant were made to-day, it could not seriously be contended that it was so included. There is such a clear and recognized distinction between horse railroads and cable roads that, applying the ordinary rules for the construction of legislative grants, neither kind of road would be included within a grant of the other. The contention, however, is that at the time of this grant cable roads were practically unknown; that the only known form of street railways was the horse railway; that the terms 'street railroad' and 'horse railroad' were in common parlance used to describe the same thing; that in construing the grant we are to place ourselves back to the time at which it was made, and these terms, 'horse railroad' and 'street railroad' being then used interchangeably for the same thing, we are to suppose that the legislature meant by the use of one term all that it would have meant by the use of the other, and that therefore all that would to-day be included within either term was within the scope of the grant. The rule for the construction of legislative grants is well settled. They are to be construed against the grantee and in favor of the public; and nothing passes unless it is obvious that the intent was that it should pass. I do not mean that they are to be construed technically and narrowly, so as to defeat the very purpose of the grant, but that, giving to language its ordinary meaning, nothing will be included unless obviously within the scope of such meaning. * * *

"This rule of construction against the grantee, which applies in all legislative grants, obtains with the greater

force in a case like the one at bar, where the grant claimed is not merely the right to do something, but of a right to exclude all the rest of the public from doing that thing. He who says that the State has given him a franchise, a right to do that which without that franchise he could not do, will be compelled to show that the franchise, the right claimed, is within the terms of his grant. Much more strenuous must be the demand upon him for clear and explicit language in his grant when he claims that a part of it is not merely the franchise, the right to do, but also the right to exclude all others of the public from exercising the same right, and the State, as the representative of the public, from according the same right to another. * * *

"Now, placing ourselves back at the time of this grant, what should be attributed to the legislature as its intent? It may be assumed that the only form of street railway in practical use was the horse railway, and that in common parlance the two terms were often used interchangeably. Is it probable that it intended to foreclose the public in advance from all benefits of possible inventions and discoveries in the matter of street railway travel, and give them to this grantee? Or, did it not rather intend that its grantee should take that complete and single thing known as a horse railway, with all of which it was familiar, and retain for the public all of the unknown possibilities of invention and discovery in reference to modes of street railway travel? Did it intend to give that which it knew nothing of or only that which it knew? It seems to me that the mere stating of the question suggests the inevitable answer. Indeed, assuming the conditions to be all as stated, if the legislature had used the words 'street railway' instead of the term 'horse railway' a very pertinent question would arise, whether it intended to grant an exclusive right to any other than

that form of street railway, to wit: horse railway, with which it was familiar. We are bound to assume that the legislature is dealing with the known and not with the unknown, and that when it grants a franchise it only intends to grant that of which it has knowledge; and it is unreasonable to lay stress on the form of language or the words used for the sake of broadening an intent so as to include things not then known."

This important case was followed by the case of Teachout vs. Des Moines Street Railway Company, 36 Am. and Eng. R. Cas. 108, involving the same question. They conclusively sustain the position of defendant in this case.

III.

The Common Council of the City of Detroit had no power to grant to the Detroit City Railway the exclusive right to construct and operate street railways in all of the streets of the city, as claimed by virtue of the Ordinance of November 24th, 1862.

1st. The following quotation from the argument of Hon. Benton Hanchett, counsel for the Detroit Railway, in the Circuit and Michigan Supreme Court, in support of the foregoing proposition, clearly sustains the decision of the State court:

"The city has no proprietary rights in the streets. Its power over the streets is a legislative power held in trust for the benefit of the public. It is a continuing power, to be exercised from time to time as the public interest may require. *Except so far as the city is specially authorized by the legislature,* the city cannot part with, diminish or limit that power by contract, or grant, or in any other way. Any contract attempted to be made having such effect is void. The power remains in the city, to be

exercised in the same manner and to the same extent as if such contract had not been attempted.

1 Dillon Mun. Corp. (3 ed.), Sec. 97, 457.
2 Dillon Mun. Corp., Sec. 680, 683.
Cooley on Const. Lim., pp. 248, 252 (6 ed.)
Gale vs. Village of Kalamazoo, 23 Mich., 344, at 353, 354.
Detroit vs. Detroit City Railway Co., 76 Mich., 421, at 425.
Meriwether vs. Garrett, 102 U. S., 472, at 501, 511, 513.
Mayor of Macon vs. Hough, 60 Ga., 221.
City of Jacksonville vs. Jacksonville R. R., 67 Ill., 540, at 543, 544.
Warren vs. Mayor of Lyons, 27 Ia., 351, at 355.
Kings Co. Fire Ins. Co. vs. Stevens, 101 N. Y., 441, at 416.
Marsh vs. Fulton Co., 10 Wall., 676, at 684.
Nash vs. Lowry, 37 Minn., 261, at 263.
Milhan vs. Sharp, 27 N. Y., 611.
Birmingham, etc., R. R. Co. vs. Birmingham St. R. Co., 79 Ala., 465, at 472, 473.
Webb vs. City of Demopolis, 13 Southern R., 288, at 295, 297.
Lake Roland Elevated R. Co. vs. Mayor of Baltimore, 54 A. & E. R. Cases, 11.
Cozzler vs. Georgetown, 6 Wheat., 93.
Illinois Cent. R. Co. vs. Ill., 146 U. S., 387.
Long vs. City of Duluth, 51 N. W., 913, 914.
North Baltimore, etc., R. Co. vs. North Ave. R. Co., 23 At., 466, 469.
Stein vs. Bienville Water Supply Co., 141 U. S., 67, 80, 81.

2d. Municipal corporations have no power to grant exclusive rights to street railway or other companies except upon authority from the legislature, explicitly and clearly expressed. Statutes of this character must be strictly construed.

Booth on Street Railways, Sec. 108.
Grand Rapids E. L. & P. Co. vs. Grand Rapids, etc., Co., 33 Fed. Rep., 659.

Jackson vs. Interstate R'y Co., 24 Fed. Rep., 306.
Saginaw Gas Light Co. vs. Saginaw, 28 Fed. Rep., 529.
Parkhurst vs. City of Salem, 32 Pac. Rep., 304.
Long vs. Duluth, 51 N. W. Rep., 913
Cook on Stockholders, Sec. 913.

This court has declared the well established rule on this subject in Ottawa vs. Carey, 108 U. S., 121. Chief Justice Waite, speaking for the court in that case said:

"Municipal corporations are created to aid the State in the regulation and administration of local affairs. They have only such powers of government as are expressly granted them or such as are necessary to carry into effect those that are granted. No powers can be implied except such as are essential to the objects and purposes of the corporation as created and established."

See also

Taylor vs. Railway, 80 Mich., 77.
People vs. Hurlbut, 24 Mich., 69.

Statutes creating monopolies, granting franchises and charters, must be construed liberally, in favor of the public, and strictly against the grantee.

The power conferred by the legislature upon the Common Council cannot be surrendered by contract. It holds the power in trust for the benefit of the people, to be exercised again and again as circumstances change from time to time. The courts have invariably sustained and preserved the future exercise of such power, and there is nothing in the statute giving the state authority to part with such power.

Counsel for plaintiff concede by their argument in this cause that no express or direct authority was ever con-

ferred by the Legislature of Michigan upon the Common Council of Detroit, to grant the exclusive privilege to occupy the streets of the city for street railway purposes, claimed under the ordinance in question.

IV.

Counsel for plaintiff assert "That the State Constitution takes the sovereign power of the State over public streets from the Legislature and vests it in the city."

Defendant contends that the city possessed no power to grant the right claimed by plaintiff unless authorized so to do by the Legislature.

The provisions of the Constitution upon this subject are as follows:

Section 9 of article 14 provides that "The State shall not be a party to, or interested in, any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of lands, or other property."

Section 23, article 4, provides, "The Legislature shall not authorize, by private or special law, the sale or conveyance of any real estate belonging to any person; nor vacate or alter any road laid out by commissioners of highways, or any street in any city or village, or in any recorded town plat."

Sections 13 and 14, of article 15, are as follows:

"Section 13. The Legislature shall provide for the incorporation and organization of cities and villages, and shall restrict their powers of taxation, borrowing money, contracting debts and loaning their credit."

"Section 14. Judicial officers of cities and villages shall be elected, and all other officers shall be elected or ap-

pointed, at such time and in such manner as the Legislature may direct."

Section 38, article 4, is as follows:

"Sec. 38. The Legislature may confer upon organized townships, incorporated villages and cities, and upon the boards of supervisors of the several counties, such powers of a local legislative and administrative character as they may deem proper."

These constitutional provisions do not vest municipal corporations with authority to grant franchises over public highways. On the contrary, Section 38, above mentioned, expressly reserves such power to the Legislature.

These constitutional provisions have received construction by the courts in the following cases:

People vs. Supervisors Ingham Co., 20 Mich., 102.

People vs. Hulbert, 24 Mich., 44.

Auditor General vs. Lothrop, 24 Mich., 235.

Hubbard vs. Township Springwells, 25 Mich., 153.

Board of Park Com. vs. Detroit, 28 Mich., 228.

Attorney General vs. Common Council of Detroit, 29 Mich., 108.

Attorney General vs. Common Council of Detroit, 58 Mich., 213.

Metropolitan Police vs. Board of Auditors, 68 Mich., 576.

Davies vs. Board of Supervisors, 89 Mich., 295.

Taylor vs. Street Railway Co., 80 Mich., 77.

In the consideration of these constitutional provisions by the United States Circuit Court of Appeals in the case of the City of Detroit vs. Detroit Citizens' Street Railway Company, et al., 64 Fed. Rep., 628-642, the Court says:

"It is impossible to draw from these provisions any recognition of inherent or ungranted authority in either the

townships, villages or cities of Michigan. That they do have the effect to limit materially the ordinary powers of Legislatures over the purely local affairs of such communities is most obvious. It is equally obvious that in regard to purely local affairs, the Legislature can only act by conferring discretionary power in regard to such subjects upon the local authorities. *If the Legislature wishes to confer or withold such power it may do so. If it shall deem such powers expedient, it may confer them with such limitations as it shall deem wise.*"

In conclusion we submit:

First, that under the Constitution of the State of Michigan the power of a municipality to grant a franchise in a public highway to a street railway *is not inherent, but is wholly derived from the Legislature.*

Second, that the statutes of the State of Michigan do not confer upon the Common Council of a city *the right to grant an exclusive privilege* to occupy the streets for street railway purposes.

Third, that the exclusive right or first option claimed by plaintiff under the ordinance in question is void.

JOHN B. CORLISS,
Counsel for Detroit Railway, Defendant.

OPINION

DETROIT CITIZENS' STREET RAILWAY COMPANY *v.* DETROIT RAILWAY.

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ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

No. 236. Argued April 26, 27, 1898.—Decided May 23, 1898.

At the time when the plaintiff in error received from the city of Detroit exclusive authority to construct and operate its railways in that city, the common council of Detroit had no power, either inherent or derived from the legislature, to confer an exclusive privilege thereto.

THE plaintiff in error is a street railway company of the State of Michigan, organized for the purpose of owning and operating lines in the city of Detroit, and is the successor in interest of a similar corporation named the Detroit City Railway. The rights asserted by it arise from an ordinance of the common council of that city passed upon November 24, 1862. This provided that the Detroit City Railway was "exclusively authorized to construct and operate railways as herein provided, on and through" (certain specified streets) "and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the common council of the said city of Detroit and assented to in writing by said corporation. . . . And provided the corporation does not assent in writing, within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give the privilege to any other company to build such route."

The ordinance provided also that "the powers and privileges conferred by the provisions of this ordinance shall be limited to thirty years from and after the date of its passage."

Section 2 of the ordinance is only necessary to be quoted, and it is inserted in the margin.[1]

[1] SEC. 2. The said grantees are, by the provisions of this ordinance, exclusively authorized to construct and operate railways as herein provided, on and through Jefferson, Michigan and Woodward avenues, Witherell, Gratiot, Grand River and Brush or Beaubien streets; and from Jefferson

Statement of the Case.

There is also inserted in the margin sections 33 and 34 of the Tram Railway Act.[1] Howell's Stats. 1882, c. 94, Title 16.

By an ordinance passed November 14, 1879, it was provided further that "the powers and privileges conferred and obligations imposed on the Detroit City Railway Company by the ordinance passed November 24, 1862, and the amend-

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avenue through Brush or Beaubien streets to Atwater street; and from Jefferson avenue, at its intersection with Woodbridge street, to Third street; up Third street to Fort street and through Fort street to the western limits of the city; and through such other streets and avenues in said city as may from time to time be fixed and determined by vote of the common council of the said city of Detroit, and assented to, in writing, by said corporation, organized as provided in section first of this ordinance. And provided, The corporation does not assent, in writing, within thirty days after the passage of said resolution of the council ordering the formation of new routes, then the common council may give the privilege to any other company to build such route, and such other company shall have the right to cross any track of rails already laid, at their own cost and expense; Provided, always, that the railways on Grand River street, Gratiot street and Michigan avenue shall each run into and connect with the Woodward avenue railways, in such direction that said railways shall be continued down to, and form, each of them, one continuous route to Jefferson avenue; Provided, always, that said railroad down Gratiot street may be continued to Woodward avenue, through State street, or through Randolph street, and Monroe avenue and the Campus Martius, as the grantees, or their assigns, under this ordinance may elect.

[1] SEC. 33. It shall be competent for parties to organize companies under this act to construct and operate railways in and through the streets of any town or city in this State.

SEC. 34. All companies or corporations formed for such purposes shall have the exclusive right to use and operate any street railways constructed, owned or held by them; Provided, that no such company or corporation shall be authorized to construct a railway under this act through the streets of any town or city without the consent of the municipal authorities of such town or city and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe; Provided, further, that, after such consent shall have been given and accepted by the company or corporation to which the same is granted, such authorities shall make no regulations or conditions whereby the rights or franchises so granted shall be destroyed or unreasonably impaired, or such company or corporation be deprived of the right of constructing, maintaining and operating such railway in the street in such consent or grant named, pursuant to the terms thereof.

ments thereto, are hereby extended and limited to thirty years from this date."

On November 20, 1894, the common council passed an ordinance granting to several third parties the right to construct street railways upon portions of certain streets upon which the plaintiff in error was maintaining and operating street railways, and also the right to construct, maintain and operate railways on certain other streets, alleys and public places in the city of Detroit, without giving to plaintiff in error the opportunity to decide whether it would construct the same. The present suit was brought in the circuit court for the county of Wayne and State of Michigan, to enjoin the grantees named in the latter ordinance, and also the city, from acting thereunder, upon the ground that it impaired the contract between the city and the plaintiff in error arising from the ordinances first aforesaid. The bill was dismissed, and, on appeal to the Supreme Court of the State, the decree of dismissal was affirmed. From that decree the present writ of error has been duly prosecuted to this court.

There are five assignments of error. They present the contention that the grant to the plaintiff in error was a contract within the protection of the provision of the Constitution of the United States, which prohibits any State from passing any law impairing the obligation of a contract, and that the subsequent grant to the defendant in error, the Detroit Railway, was a violation and an impairment of the obligation of that contract.

Mr. John C. Donnelly, *Mr. H. M. Duffield* and *Mr. Frederic A. Baker* for plaintiff in error. *Mr. Michael Brennan*, *Mr. David Willcox* and *Mr. Frank Sullivan Smith* were on the plaintiff in error's briefs.

Mr. John B. Corlies, *Mr. Charles Flowers* and *Mr. Joseph H. Choate* for defendants in error. *Mr. Philip A. Rollins* was on their brief.

Mr. Justice McKenna, after stating the case, delivered the opinion of the court.

Opinion of the Court.

The controversy turns primarily upon the power of the city of Detroit over its streets, whether original under the constitution of the State, and hence as extensive as it would be in the legislature, or whether not original but conferred by the legislature, and hence limited by the terms of the delegation. The first proposition is asserted by the plaintiff in error; the second proposition by the defendants in error.

The provisions of the constitution which are pertinent to the case are as follows:

"The State shall not be a party to or interested in any work of internal improvement, nor engaged in carrying on any such work, except in the expenditure of grants to the State of land or other property.

"There shall be elected annually on the first Monday of April in each organized township . . . one commissioner of highways . . . and one overseer of highways for each highway district.

"The legislature shall not . . . vacate or alter any road laid out by the commissioners of highways, or any street in any city or village, or in any recorded town plat.

"The legislature may confer upon organized townships, incorporated cities and villages, and upon boards of supervisors of the several counties such powers of a local, legislative and administrative character as they may deem proper."

The Supreme Court of Michigan, in its opinion, 68 N. W. Rep. 304, interprets these provisions adversely to the contention of plaintiff in error, and, reviewing prior cases, declares their harmony with the views expressed. "The scope of the earlier decisions," the court said, "is clearly stated by Mr. Justice Cooley in *Park Commissioners* v. *Common Council*, 28 Michigan, 239. After stating that the opinion in *People* v. *Hurlbut* had been misapprehended, Justice Cooley said: 'We intended in that case to concede most fully that the State must determine for each of its municipal corporations the powers it should exercise, and the capacities it should possess, and that it must also decide what restrictions should be placed upon these, as well to prevent clashing of action and interest in the State as to protect individual corporators

against injustice and oppression at the hands of the local majority. And what we said in that case we here repeat — that, while it is a fundamental principle in this State, recognized and perpetuated by expressed provisions of the constitution, that the people of every hamlet, town and city of the State are entitled to the benefits of local self-government, the constitution has not pointed out the precise extent of local powers and capacities, but has left them to be determined in each case by the legislative authority of the State from considerations of general policy, as well as those which pertain to the local benefit and local desires. And in conferring those powers it is not to be disputed that the legislature may give extensive capacity to acquire and hold property for local purposes or it may confine authority within the narrow bounds; and what it thus confers it may enlarge, restrict or take away at pleasure.'"

This decision of the Supreme Court of Michigan is persuasive if not authoritative; but, exercising an independent judgment, we think it is a correct interpretation of the constitutional provisions. The common council of Detroit, therefore, had no inherent power to confer the exclusive privilege claimed by the plaintiff in error.

Did it get such power from the legislature? It is contended that it did by the act under which the Detroit City Railway Company, the predecessor of plaintiff in error, was organized, and to whose rights and franchises it succeeded. This act is the Tram Railway Act, and at the time of the adoption of the first ordinance in 1862, section 34 of that act provided that "all companies or corporations formed for such purposes [the railway purposes mentioned in the act] shall have the exclusive right to use and operate any railways constructed, owned or held by them: Provided, that no such company or corporation shall be authorized to construct a railway, under this act, through the streets of any town or city, without the consent of the municipal authorities of such town or city, and under such regulations and upon such terms and conditions as said authorities may from time to time prescribe."

Opinion of the Court.

In 1867 the further proviso was added that, after such consent should be given and accepted, such authorities should make no regulations or conditions whereby the rights or franchises so granted should be destroyed or unreasonably impaired, or such company be deprived of the right of constructing, maintaining and operating such railway.

It is clear that the statute did not explicitly and directly confer the power on the municipality to grant an exclusive privilege to occupy its streets for railway purposes. It is urged, however, that such power is to be inferred from the provision which requires the consent of the municipal authorities to the construction of a railway under such terms as they may prescribe, combined with the provisions of the constitution, which, if they do not confer a power independent of the legislature, strongly provide for and intend local government. The argument is strong, and all of its strength has been presented and is appreciated, but there exist considerations of countervailing and superior strength. That such power must be given in language explicit and express, or necessarily to be implied from other powers, is now firmly fixed. There were many reasons which urged to this — reasons which flow from the nature of the municipal trust — even from the nature of the legislative trust, and those which, without the clearest intention explicitly declared — insistently forbid that the future should be committed and bound by the conditions of the present time, and functions delegated for public purposes be paralyzed in their exercise by the existence of exclusive privileges. The rule and the reason for it are expressed in *Minturn* v. *Larue*, 23 How. 435; *Wright* v. *Nagle*, 101 U. S. 791; *State* v. *Cincinnati Gas Light and Coke Co.*, 18 Ohio St. 262; *Parkhurst* v. *Salem*, 32 Pac. Rep. 304; *Saginaw Gas Light Co.* v. *Saginaw*, 28 Fed. Rep. 529, decided by Mr. Justice Brown of this court; *Long* v. *Duluth*, 51 N. W. Rep. 913. See also *Grand Rapids Electric Light and Power Co.* v. *Grand Rapids &c. Co.*, 33 Fed. Rep. 659, opinion delivered by Mr. Justice Jackson at circuit. As bearing on the rule, see also *Oregon Railway & Navigation Co.* v. *Oregonian Railway Co.*, 130 U. S.

1; *Central Transportation Co.* v. *Pullman Palace Car Co.*, 139 U. S. 24.

The power, therefore, must be granted in express words or necessarily to be implied. What does the latter mean? Mr. Justice Jackson, in *Grand Rapid &c. Power Co.* v. *Grand Rapid &c. Co.*, *supra*, says: . . . "that municipal corporations possess and can exercise only such powers as are 'granted in *express words*, or those *necessarily* or *fairly* implied, *in or incident to the powers expressly conferred, or those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.*'" The italics are his. This would make "necessarily implied" mean inevitably implied. The Court of Appeals of the Sixth Circuit, by Circuit Judge Lurton, adopts Lord Hardwicke's explanation, quoted by Lord Eldon in *Wilkinson* v. *Adam*, 1 Ves. & B. 422, 466, that "a necessary implication means not natural necessity, but so strong a probability of intention, that an intention contrary to that, which is imputed to the testator, cannot be supposed." If this be more than expressing by circumlocution an inevitable necessity, we need not stop to remark; or if it mean less, to sanction it, because we think that the statute of Michigan, tested by it, does not confer on the common council of Detroit the power it attempted to exercise in the ordinance of 1862. To refer the right to occupy the streets of any town or city to the consent of its local government was natural enough — would have been natural under any constitution not prohibiting it, and the power to prescribe the terms and regulations of the occupation derive very little if any breadth from the expression of it. But assuming the power to prescribe terms does acquire breadth from such expression, surely there is sufficient range for its exercise which stops short, or which rather does not extend to granting an exclusive privilege of occupation. Surely there is not so strong a probability of an intention of granting so extreme a power that one, contrary to it cannot be supposed, which is Lord Hardwicke's test, or that it is indispensable to the purpose for which the power is given or necessarily to be implied from it which is the test of the cases. The rule is one

of construction. Any grant of power in general terms read literally can be construed to be unlimited, but it may, notwithstanding, receive limitation from its purpose — from the general purview of the act which confers it. A municipality is a governmental agency — its functions are for the public good, and the powers given to it and to be exercised by it must be construed with reference to that good and to the distinctions which are recognized as important in the administration of public affairs.

Easements in the public streets for a limited time are different and have different consequences from those given in perpetuity. Those reserved from monopoly are different and have different consequences from those fixed in monopoly. Consequently those given in perpetuity and in monopoly must have for their authority explicit permission, or, if inferred from other powers, it is not enough that the authority is convenient to them, but it must be indispensable to them.

Decree affirmed.

Mr. Justice Shiras did not hear the argument and took no part in the decision.